



# **Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement**

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**November 2012**

***Volume 5: Appendices K–M and Comment Response Document***





**On the cover:**

**Background photo: View of Ashley Valley near Asphalt Ridge in Utah from U.S. 45**

**(Credit: R.G. Sullivan, Argonne National Laboratory)**



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*Volume 5: Appendices K–M and Comment Response Document*

U.S. Department of the Interior  
Bureau of Land Management





## BLM Mission Statement

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

BLM/WO/GI-12/013+3000

DOI No. FES 12-41



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## NOTATION

The following is a list of acronyms and abbreviations, chemical names, and units of measure used in this document. Some acronyms used only in tables may be defined only in those tables.

### GENERAL ACRONYMS AND ABBREVIATIONS

ACEC	Area of Critical Environmental Concern
AGR	aboveground retort
AIRFA	American Indian Religious Freedom Act
AMSO	American Shale Oil, LLC
ANFO	ammonium nitrate and fuel oil
APE	Area of Potential Effects
API	American Petroleum Institute
APLIC	Avian Power Line Interaction Committee
APP	Avian Protection Plan
AQRV	air quality–related value
ARCO	Atlantic Richfield Company
ATP	Alberta Taciuk Process
ATSDR	Agency for Toxic Substances and Disease Registry
AWEA	American Wind Energy Association
AZGFD	Arizona Game and Fish Department
BA	biological assessment
BCD	barrels per calendar day
BLM	Bureau of Land Management
BMP	best management practice
BO	biological opinion
BOR	U.S. Bureau of Reclamation
BPA	Bonneville Power Administration
BSD	barrels per stream day
BTEX	benzene, toluene, ethylbenzene, and xylenes
CAA	Clean Air Act
CAPP	Canadian Association of Petroleum Producers
CARB	California Air Resources Board
CASTNET	Clean Air Status and Trends Network
CBOSC	Cathedral Bluffs Oil Shale Company
CCR™	Conduction, Convection, and Reflux
CCW	coal combustion waste
CDC	Centers for Disease Control and Prevention
CDOT	Colorado Department of Transportation
CDOW	Colorado Division of Wildlife (now Colorado Parks and Wildlife)



CDPHE	Colorado Department of Public Health and Environment
CEQ	Council on Environmental Quality
CFR	<i>Code of Federal Regulations</i>
CHAT	Critical Habitat Assessment Tool
CHL	combined hydrocarbon lease
CIRA	Cooperative Institute for Research in the Atmosphere
CNHP	Colorado Natural Heritage Program
COGCC	Colorado Oil and Gas Conservation Commission
CPC	Center for Plant Conservation
CPW	Colorado Parks and Wildlife (formerly Colorado Division of Wildlife)
CRBSCF	Colorado River Basin Salinity Control Forum
CRD	Comment Response Document
CRSCP	Colorado River Salinity Control Program
CRWQIP	Colorado River Water Quality Improvement Program
CSS	cyclic steam stimulation
CSU	Controlled Surface Use
CWA	Clean Water Act
CWCB	Colorado Water Conservation Board
CWS	Canadian Wildlife Service
DoD	U.S. Department of Defense
DOE	U.S. Department of Energy
DOI	U.S. Department of the Interior
DOL	U.S. Department of Labor
DOT	U.S. Department of Transportation
DRMS	Division of Reclamation Mining & Safety (Colorado)
DRUA	Dispersed Recreation Use Area
EA	environmental assessment
EGL	EGL Resources, Inc.
EIA	Energy Information Administration
E-ICP	bare electrode in situ conversion process
EIS	environmental impact statement
EMF	electric and magnetic field
E.O.	Executive Order
EOR	enhanced oil recovery
EPA	U.S. Environmental Protection Agency
EPRI	Electric Power Research Institute
EQIP	Environmental Quality Incentives Program
ESA	Endangered Species Act of 1973
FAA	Federal Aviation Administration
FLPMA	Federal Land Policy and Management Act of 1976
FONSI	Finding of No Significant Impact
FR	<i>Federal Register</i>

FTE	full-time equivalent
FY	fiscal year
GCR	gas combustion retort
GHG	greenhouse gas
GIS	geographic information system
GPO	Government Printing Office
GSENM	Grand Staircase–Escalante National Monument
HAP	hazardous air pollutant
HAZCOM	hazard communication
HFC	hydrofluorcarbon
HMA	Herd Management Area
HMMH	Harris Miller Miller & Hanson, Inc.
I-70	Interstate 70
IARC	International Agency for Research on Cancer
ICP	in situ conversion process
IEC	International Electrochemical Commission
IM	Instructional Memorandum
IPPC	Intergovernmental Panel on Climate Change
ISA	Instant Study Area
ISWS	Illinois State Water Survey
IUCNNR	International Union for Conservation of Nature and Natural Resources
JMH CAP	Jack Morrow Hills Coordinated Activity Plan
KOP	key observation point
KSLA	Known Sodium Leasing Area
LAU	Lynx Analysis Unit
L <sub>dn</sub>	day-night average sound level
L <sub>eq</sub>	equivalent sound pressure level
LETC	Laramie Energy Technology Center
LM	Office of Legacy Management (DOE)
LPG	liquefied petroleum gas
LWC	lands having wilderness characteristics
M&I	municipal and industrial
MFP	Management Framework Plan
MIG, Inc.	Minnesota IMPLAN Group, Inc.
MIS	modified in situ recovery
MLA	Mineral Leasing Act
MMC	Multi Minerals Corporation
MMTA	Mechanically Mineable Trona Area
MOU	Memorandum of Understanding



MPCA	Minnesota Pollution Control Agency
MSDS	Material Safety Data Sheet
MSHA	Mine Safety and Health Administration
MSL	mean sea level
MTR	military training route
NAAQS	National Ambient Air Quality Standards
NADP	National Atmospheric Deposition Program
NAGPRA	Native American Graves Protection and Repatriation Act
NCA	National Conservation Area
NCDC	National Climate Data Center
NEC	National Electric Code
NEPA	National Environmental Policy Act of 1969
NESHAP	National Emission Standards for Hazardous Air Pollutants
NFS	National Forest Service
NHPA	National Historic Preservation Act of 1966
NLCS	National Landscape Conservation System
NMFS	National Marine Fisheries Service
NNHP	Nevada Natural Heritage Program
NOA	Notice of Availability
NOI	Notice of Intent
NORM	naturally occurring radioactive materials
NOSR	Naval Oil Shale Reserves
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NRA	National Recreation Area
NRHP	<i>National Register of Historic Places</i>
NSC	National Safety Council
NSO	No Surface Occupancy
NTSA	National Trails System Act
NTT	National Technical Team
NWCC	National Wind Coordinating Committee
NWR	National Wildlife Refuge
OHV	off-highway vehicle
OOSI	Occidental Oil Shale, Inc.
OPEC	Organization of Petroleum Exporting Countries
OSEC	Oil Shale Exploration Company
OSEW/SPP	Oil Sands Expert Workgroup/Security and Prosperity Partnership
OSHA	Occupational Safety and Health Administration
OSTS	oil shale and tar sands
OTA	Office of Technology Assessment
PA	Programmatic Agreement
PADD	Petroleum Administration for Defense District
PAH	polycyclic aromatic hydrocarbon

PCB	polychlorinated biphenyl
PEIS	programmatic environmental impact statement
PFC	perfluorocarbons
PFYC	Potential Fossil Yield Classification
PILT	payment in lieu of taxes
P.L.	Public Law
PM	particulate matter
PM <sub>2.5</sub>	particulate matter with an aerodynamic diameter of 2.5 µm or less
PM <sub>10</sub>	particulate matter with an aerodynamic diameter of 10 µm or less
PPE	personal protective equipment
PPH	Preliminary Priority Habitat
PRLA	preference right lease area
PSD	Prevention of Significant Deterioration
R&D	research and development
R&I	relevance and importance
RBOSC	Rio Blanco Oil Shale Company
RCRA	Resource Conservation and Recovery Act of 1976
RD&D	research, development, and demonstration
RF	radio frequency
RFDS	reasonably foreseeable development scenario
RMP	Resource Management Plan
ROD	Record of Decision
ROI	region of influence
ROS	Recreation Opportunity Spectrum
ROW	right-of-way
SAGD	steam-assisted gravity drainage
SAMHSA	Substance Abuse and Mental Health Services Administration
SDWA	Safe Drinking Water Act of 1974
SFC	Synthetic Fuels Corporation
SHPO	State Historic Preservation Office(r)
SIP	State Implementation Plan
SMA	Special Management Area
SMP	suggested management practice
SPR	Strategic Petroleum Reserve
SRMA	Special Recreation Management Area
SSI	self-supplied industry
STSA	Special Tar Sand Area
SWCA	SWCA, Inc., Environmental Consultants
SWPPP	Stormwater Pollution Prevention Plan
SWWRC	States West Water Resources Corporation
TDS	total dissolved solids
THAI	toe to head air injection
TIS	true in situ recovery



TL	timing limitation
TMDL	Total Maximum Daily Load
TOSCO	The Oil Shale Corporation
TSCA	Toxic Substances Control Act of 1976
TSDF	treatment, storage, and disposal facility
UDEQ	Utah Department of Environmental Quality
UDNR	Utah Department of Natural Resources
UDWR	Utah Division of Wildlife Resources
UGS	Utah Geological Survey
UIC	underground injection control
ULP	Uranium Leasing Program
USACE	U.S. Army Corps of Engineers
USC	<i>United States Code</i>
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGCRP	U.S. Global Change Research Program
USGS	U.S. Geological Survey
VCRS	Visual Contrast Rating System
VOC	volatile organic compound
VRI	Visual Resource Inventory
VRM	Visual Resource Management
WDEQ	Wyoming Department of Environmental Quality
WEQC	Wyoming Environmental Quality Council
WGFD	Wyoming Game and Fish Department
WRAP	Western Regional Air Partnership
WRCC	Western Regional Climate Center
WRI	World Resources Institute
WRSOC	White River Shale Oil Corporation
WSA	Wilderness Study Area
WSR	Wild and Scenic River
WTGS	wind turbine generator system
WYCRO	Wyoming Cultural Records Office
WYNDD	Wyoming Natural Diversity Database

## CHEMICALS

CH <sub>4</sub>	methane	H <sub>2</sub> S	hydrogen sulfide
CO	carbon monoxide		
CO <sub>2</sub>	carbon dioxide	NH <sub>3</sub>	ammonia
CO <sub>2</sub> c	carbon dioxide equivalent	NO <sub>2</sub>	nitrogen dioxide

N <sub>2</sub> O	nitrous oxide	SF <sub>6</sub>	sulfur hexafluoride
NO <sub>x</sub>	nitrogen oxides	SO <sub>2</sub>	sulfur dioxide
		SO <sub>x</sub>	sulfur oxides
O <sub>3</sub>	ozone		
Pb	lead		

## UNITS OF MEASURE

ac-ft	acre foot (feet)	kPa	kilopascal(s)
		kV	kilovolt(s)
bbl	barrel(s)	kWh	kilowatt-hour(s)
Btu	British thermal unit(s)		
		L	liter(s)
°C	degree(s) Celsius	lb	pound(s)
cfs	cubic foot (feet) per second		
cm	centimeter(s)	m	meter(s)
		m <sup>2</sup>	square meter(s)
dB	decibel(s)	m <sup>3</sup>	cubic meter(s)
dBA	A-weighted decibel(s)	mg	milligram(s)
		mi	mile(s)
°F	degree(s) Fahrenheit	mi <sup>2</sup>	square mile(s)
ft	foot (feet)	mJ	megajoule(s)
ft <sup>3</sup>	cubic foot (feet)	mm	millimeter(s)
		MMBtu	million Btus
g	gram(s)	mph	mile(s) per hour
gal	gallon(s)	MW	megawatt(s)
GJ	gigajoule(s)		
gpd	gallon(s) per day	ppb	part(s) per billion
gpm	gallon(s) per minute	ppm	part(s) per million
GW	gigawatt(s)	ppmv	part(s) per million by volume
GWh	gigawatt hour(s)	psi	pound(s) per square inch
h	hour(s)	rpm	rotation(s) per minute
ha	hectare(s)		
hp	horsepower	s	second(s)
Hz	hertz	scf	standard cubic foot (feet)
in.	inch(es)	yd <sup>2</sup>	square yard(s)
		yd <sup>3</sup>	cubic yard(s)
K	degree(s) Kelvin	yr	year(s)
kcal	kilocalorie(s)		
kg	kilogram(s)	μm	micrometer(s)
km	kilometer(s)		



## ENGLISH/METRIC AND METRIC/ENGLISH EQUIVALENTS<sup>a</sup>

The following table lists the appropriate equivalents for English and metric units.

Multiply	By	To Obtain
<i>English/Metric Equivalents</i>		
acres	0.4047	hectares (ha)
cubic feet (ft <sup>3</sup> )	0.02832	cubic meters (m <sup>3</sup> )
cubic yards (yd <sup>3</sup> )	0.7646	cubic meters (m <sup>3</sup> )
degrees Fahrenheit (°F) -32	0.5555	degrees Celsius (°C)
feet (ft)	0.3048	meters (m)
gallons (gal)	3.785	liters (L)
gallons (gal)	0.003785	cubic meters (m <sup>3</sup> )
inches (in.)	2.540	centimeters (cm)
miles (mi)	1.609	kilometers (km)
miles per hour (mph)	1.609	kilometers per hour (kph)
pounds (lb)	0.4536	kilograms (kg)
short tons (tons)	907.2	kilograms (kg)
short tons (tons)	0.9072	metric tons (t)
square feet (ft <sup>2</sup> )	0.09290	square meters (m <sup>2</sup> )
square yards (yd <sup>2</sup> )	0.8361	square meters (m <sup>2</sup> )
square miles (mi <sup>2</sup> )	2.590	square kilometers (km <sup>2</sup> )
yards (yd)	0.9144	meters (m)
<i>Metric/English Equivalents</i>		
centimeters (cm)	0.3937	inches (in.)
cubic meters (m <sup>3</sup> )	35.31	cubic feet (ft <sup>3</sup> )
cubic meters (m <sup>3</sup> )	1.308	cubic yards (yd <sup>3</sup> )
cubic meters (m <sup>3</sup> )	264.2	gallons (gal)
degrees Celsius (°C) +17.78	1.8	degrees Fahrenheit (°F)
hectares (ha)	2.471	acres
kilograms (kg)	2.205	pounds (lb)
kilograms (kg)	0.001102	short tons (tons)
kilometers (km)	0.6214	miles (mi)
kilometers per hour (kph)	0.6214	miles per hour (mph)
liters (L)	0.2642	gallons (gal)
meters (m)	3.281	feet (ft)
meters (m)	1.094	yards (yd)
metric tons (t)	1.102	short tons (tons)
square kilometers (km <sup>2</sup> )	0.3861	square miles (mi <sup>2</sup> )
square meters (m <sup>2</sup> )	10.76	square feet (ft <sup>2</sup> )
square meters (m <sup>2</sup> )	1.196	square yards (yd <sup>2</sup> )

<sup>a</sup> In general in this PEIS, only English units are presented. However, where reference sources provided both English and metric units, both values are presented in the order in which they are given in the source. Where reference sources provided only metric units, only those units are presented.

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**APPENDIX K:**

**GREATER SAGE-GROUSE INSTRUCTIONAL MEMORANDA, CONSERVATION  
MEASURES, AND CORE AREA PROTECTION STRATEGIES**

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**K.1 Instruction Memorandum 2010-071: Gunnison and Greater Sage-Grouse Management Considerations for Energy Development (Supplement to *National Sage-Grouse Habitat Conservation Strategy*)**

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240  
<http://www.blm.gov/>

Print Page

March 5, 2010

In Reply Refer To:  
1110 (230/300) P

EMS TRANSMISSION 03/05/2010  
Instruction Memorandum No. 2010-071  
Expires: 09/30/2011

To: All Field Officials

From: Director

Subject: Gunnison and Greater Sage-grouse Management Considerations for Energy Development (Supplement to *National Sage-Grouse Habitat Conservation Strategy*)

**Program Areas:** Oil and Gas, Oil Shale, Geothermal, Wind, Solar, and Associated Rights-of-Way, Wildlife, Land Use Planning, National Environmental Policy Act.

**Purpose:** This Instruction Memorandum (IM) supplements the Bureau of Land Management's (BLM) 2004 *National Sage-Grouse Habitat Conservation Strategy* (BLM National Strategy). The BLM is issuing this IM in light of—

- recent peer-reviewed scientific studies addressing the impacts of oil and gas development on sage-grouse;
- the currently limited information available concerning the impacts of wind energy development on sage-grouse; and
- the increasing land use pressures on the public lands, including the BLM's authorization of renewable energy projects.

This IM identifies management actions necessary at some sites to ensure environmentally responsible exploration, authorization, leasing, and development of renewable and non-renewable energy resources within the ranges of the Gunnison sage-grouse and greater sage-grouse.

On March 5, 2010, the U.S. Fish and Wildlife Service announced that listing of the greater sage-grouse as an endangered species under the Endangered Species Act (ESA) is warranted, but listing is precluded by the need to complete other listing actions of higher priority. In view of this finding, it is of even greater importance that the BLM continue to work to improve the BLM National Strategy. This IM, focusing on energy development, is another step in that direction. When a range-wide "priority" or "core" sage-grouse habitat map is developed and as additional research on threats to sage-grouse other than energy development becomes available, the BLM will issue a more comprehensive Bureau-wide policy directive. The BLM will continue to work with its partners—the Western Association of Fish and Wildlife Agencies (WAFWA), U.S. Fish and Wildlife Service, U.S. Geological Survey, Natural Resources Conservation Service, U.S. Forest Service, and the Farm Service Agency—within the framework of the partners' Sagebrush Memorandum of Understanding (2008) (Sagebrush MOU) and the *Greater Sage-Grouse Comprehensive Conservation Strategy* (2006) (Multiagency Strategy).

**Policy/Action:** The Gunnison sage-grouse and greater sage-grouse are BLM sensitive species that are to be managed to promote their conservation and to minimize the need for listing under the ESA, in accordance with the BLM's special status species policy (BLM Manual 6840). Therefore, when necessary to maintain sustainable sage-grouse populations across the broader landscape within the state, field managers will implement an appropriate combination of the following actions in "priority habitat."

Generally speaking, "priority habitat" is the habitat of highest conservation value relative to maintaining sustainable sage-grouse populations range-wide. Priority habitat will be areas of high quality habitat supporting important sage-grouse populations, including those populations that are vulnerable to localized extirpation but necessary to maintain range-wide connectivity and genetic diversity.

#### I. Actions Available for Protection of Sage-grouse Populations

##### Oil and Gas/Geothermal:

- Withhold from sale or defer the sale of parcels, in whole or in part, that industry has proposed for oil and gas or geothermal leasing in priority habitat as supported by analysis under the National Environmental Policy Act (NEPA) of the impacts of leasing on sage-grouse.
- If parcels are offered for sale in sage-grouse priority habitat, attach a lease notice to new leases alerting the lessee that additional conditions will be applied to approvals to develop to the lease, including Applications for Permit to Drill (APDs), sundry notices and associated rights-of-way, if future sage-grouse conservation efforts are appropriate.
- In priority habitat and where supported by NEPA analysis, attach conditions to the approval of APDs that are more protective than the stipulations or restrictions identified in the applicable Resource Management Plan (RMP), as appropriate.

##### Oil Shale:

- Screen new oil shale lease applications to identify whether the proposed leasing area includes priority habitat. If so, alert the applicant as early as possible that, pending NEPA analysis, the application may be delayed or denied or that lease stipulations and project conditions of approval may be imposed that designate avoidance areas or include No Surface Occupancy restrictions, for example.

##### Wind and Solar Energy Development and Associated Site Testing:

- Screen new right-of-way applications to identify whether the wind or solar energy development or site testing and project area includes priority habitat. If so, alert the applicant as early as possible that the application may be denied or that terms and conditions may be imposed on the right-of-way grant to protect priority habitat as supported by NEPA analysis.

##### Transmission:

- Re-route proposed transmission projects to avoid priority habitat.

##### RMP Revisions/Amendments:

- In RMP revisions and amendments, analyze one or more alternatives that would exclude priority habitat from energy development and transmission projects.

The BLM will consider how projects can avoid, minimize, and mitigate impacts onsite. However, the BLM may condition approval of a project proposal upon additional onsite modification or additional mitigation, including offsite mitigation.



IM 2010-071, Gunnison and Greater Sage-grouse Management Considerations for Energy Development (Supplement to National Sage-Grouse Habitat Conservation Strategy)

Both the BLM and the state fish and wildlife agencies recognize that priority habitat has not been identified range-wide utilizing a consistent methodology. Until the BLM has fully engaged its state fish and wildlife agency counterparts in the mapping of priority habitat, the BLM will identify priority habitat using RMPs, state-led and Local Working Group sage-grouse plans, peer-reviewed literature, conservation plans or agreements, and professional judgment.

## II. Future Actions for the Protection of Sage-grouse Populations

Further action that will help to develop a comprehensive Bureau-wide policy for the protection of sage-grouse populations and the conservation of habitat on a landscape scale will be pursued in the near future. These efforts will be undertaken within the collaborative framework established by the Sagebrush MOU and the Multiagency Strategy. Specifically, the following steps will be taken after issuance of this IM:

- The BLM will continue to work with the state fish and wildlife agencies, using a consistent protocol, to delineate and map areas of high priority habitat across the ranges of Gunnison sage-grouse and greater sage-grouse. This map will serve as a platform for a more directed Bureau-wide sage-grouse policy, similar to the approach already taken in Wyoming.
- Upon completion of a range-wide priority habitat map described above, each BLM State Office, working in coordination with the respective state fish and wildlife agency, will identify state-specific management actions (not limited to energy development) on a landscape level that will be undertaken both inside and outside of identified priority habitat in order to maintain sustainable sage-grouse populations.

Protection of sage-grouse populations and habitat is of critical importance, and several BLM State Offices have extensive sage-grouse conservation plans that were developed cooperatively with state fish and wildlife directors and stakeholder groups. In taking the steps listed above, the BLM will work diligently to ensure that it addresses local efforts or situations.

**Timeframe:** This IM is effective immediately.

**Budget Impact:** This IM will result in additional costs for mapping, coordination, NEPA review, and monitoring.

**Background:** It is imperative that fragmentation and degradation of Gunnison sage-grouse and greater sage-grouse habitat not continue to the point that sustainable sage-grouse populations can no longer be supported. In November 2004, the BLM published the BLM National Strategy. The BLM National Strategy set goals and objectives and assembled guidance and resource materials. It also provided comprehensive management direction for the BLM's contributions to the ongoing multi-state sage-grouse conservation effort, in cooperation with WAFWA. This IM reflects continued implementation of the goals set forth in the BLM National Strategy.

Although the focus of this IM is energy development, energy development is not the only or necessarily the most significant threat to Gunnison or greater sage-grouse. The purpose of this IM is to highlight management actions affecting sage-grouse habitat that will be necessary to sustain sage-grouse populations in light of new information and the Department of the Interior's energy-related priorities.

Since completion of the BLM National Strategy, additional peer-reviewed research analyzing the impacts of oil and gas development on greater sage-grouse has become available. Some aspects of oil and gas development affecting sage-grouse use of an area (e.g., construction of facilities, road networks, and resulting habitat fragmentation) also occur in other types of energy development. In addition, while not specific to Gunnison sage-grouse or greater sage-grouse, other research has been completed on the impacts of wind energy development on prairie chickens that is applicable to closely related species such as Gunnison and greater sage-grouse. The BLM will consider this body of research in the context of all energy development activities on the public lands.

The Mineral Leasing Act (Act or MLA) provides that all lands subject to the Act "which are known or believed to contain oil or gas deposits may be leased by the Secretary [of the Interior]." 30 U.S.C. 226(a) (2009). The Supreme Court held that the Act gives the Secretary broad discretion not to offer an oil and gas tract for leasing. *Udall v. Tallman*, 380 U.S. 1, 4 (1965). The U.S. Court of Appeals for the Ninth Circuit held that refusing to issue leases is a legitimate exercise of the Secretary's discretion under the MLA (see *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975) (citing *Tallman*, 380 U.S. at 4)). The Interior Board of Land Appeals has expressly held that lands identified for oil and gas leasing in an RMP are open for permissible uses, and the BLM has no duty to offer them for lease, even when the BLM has received a pre-sale non-competitive offer to lease (*Richard D. Sawyer*, 160 IBLA 158, 163 (2003)) or a nomination for competitive lease (*Marathon Oil Co.*, 139 IBLA 347 (1997)). The BLM may also decline to lease even after the BLM has received bids and bonus monies at a competitive lease sale (*Continental Land Resources*, 162 IBLA 1, 14-15 (2004)). The IBLA has also upheld the BLM's authority to impose more stringent protection measures on approval of development plans or permits than provided for in lease stipulations when supported by current science and analyzed through the NEPA process (see *William P. Maycock*, 177 IBLA 1 (2009); *Yates Petroleum Corp.*, 176 IBLA 144 (2008)).

Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761-1771, authorizes the Secretary to grant rights-of-way over, upon, under, or through the public lands for a variety of purposes, such as roads, water pipelines, systems for generation of electric energy, and communication systems. The IBLA has held that a decision to issue a right-of-way is discretionary. (*Mark Patrick Heath*, 161 IBLA 381, 388 (2004)). The discretionary nature of a right-of-way grant is underscored by BLM regulations at 43 CFR 2804.26, which provide that an application for a right-of-way may be denied if the proposed use would not be in the public interest.

**Coordination:** This IM was coordinated with the Assistant Director, Renewable Resources and Planning (WO-200), the Assistant Director, Minerals and Realty Management (WO-300), and BLM Deputy State Directors.

**Contact:** State Directors may direct any questions or concerns to Michael D. Nedd, Assistant Director, Minerals and Realty Management (WO-300), at 202-208-4201 or [mike\\_nedd@blm.gov](mailto:mike_nedd@blm.gov), and Edwin Roberson, Assistant Director, Renewable Resources and Planning (WO-200), at 202-208-4896 or [edwin\\_robertson@blm.gov](mailto:edwin_robertson@blm.gov).

Signed by:  
Robert V. Abbey  
Director

Authenticated by:  
Robert M. Williams  
Division of IRM Governance, WO-560

Last updated: 03-05-2010

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## **K.2 USFWS Letter Agreeing to Management of Greater Sage-Grouse**





## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
5353 Yellowstone Road, Suite 308A  
Cheyenne, Wyoming 82009



In Reply Refer To:  
ES-61411/WY11TA0313

June 24, 2011

The Honorable Matthew H. Mead  
Governor of Wyoming  
State Capitol  
Cheyenne, Wyoming 82002

Dear Governor Mead:

Thank you for your letter of June 3, 2011, regarding Executive Order 2011-5, Greater Sage-Grouse Core Area Protection (Executive Order), signed on June 2, 2011. We are pleased with the implementation of this conservation strategy and commend the work of your office and that of the Sage-Grouse Implementation Team (Implementation Team) for the continuing commitment to conserve the Greater sage-grouse in Wyoming.

In your letter, you specifically request a response from our office as to whether the U.S. Fish and Wildlife Service (Service) continues to view implementation of the Executive Order as an adequate mechanism to preclude the need to list this species and if the Executive Order remains a sound policy to manage and protect sage-grouse populations in Wyoming. The Service believes the Executive Order can result in the long-term conservation of the Greater sage-grouse and thus reduce the need to list the species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). If fully implemented, we believe the Executive Order can provide the conservation program necessary to achieve your goal of precluding listing of the Greater sage-grouse in Wyoming. As you are well aware, actions outside the State borders and by entities not falling under the jurisdiction of the State of Wyoming may influence any final listing decision. However, implementation of the Executive Order is one of the most significant efforts that the State of Wyoming can implement to conserve the Greater sage-grouse.

We believe the Executive Order, along with the guidelines outlined by the Implementation Team and the Inter-agency Implementation working subgroup, is a sound policy framework by which to conserve Greater sage-grouse in Wyoming. As stated in our March 23, 2010, status determination for the Greater sage-grouse (Decision: 75 FR 13910), "the Service believes that the core area strategy ... if implemented by all landowners via regulatory mechanisms, would provide adequate protection for sage-grouse and their habitat in that State." This is a critical point and remains true for your new Executive Order. To be effective, State, Federal and private landowners must all implement this Executive Order.



Implementation of the Executive Order will need to keep current with the best available science in order to meet the information requirements of the Act (section 4(b)(1)(A)). This may include incorporation of other important seasonal habitats into core areas as they are identified. The Implementation Team actively engaged this topic, but due to lack of data on the location of those habitats, the final resolution was left to local working groups once data become available. While we support the development of local solutions to address the protection of seasonal habitats as they are identified, these local solutions must be based on sound scientific data. It is also critical that the protections for seasonal habitats address the real conservation concerns for these potentially limiting habitat areas. Additionally, local solutions need to have mechanisms to ensure they will in fact be implemented, for example be regulatory in nature to the extent practicable.

The Service encourages the State to continue to actively advocate for sage-grouse conservation, and perhaps more importantly, healthy sagebrush ecosystems. We understand the reservations you considered in making the decision to execute Executive Order 2011-5. We recognize that the conservation of sage-grouse will involve difficult choices in prioritizing management objectives for a variety of needs within Wyoming. While we do not advocate for elimination or preclusion of any activity, we do encourage the State and project proponents to consider all alternatives that minimizes or removes impacts to the sagebrush ecosystem. We offer our assistance in these efforts if desired. Additionally, we encourage the State to continue to be active participants in the decision-making processes conducted by land managers in Wyoming, including State agencies, which affect sage-grouse and sagebrush. We recognize the State of Wyoming's expertise in sage-grouse and encourage use of that information to inform these planning processes.

In summary, the Service believes the Greater Sage-grouse Core Area Protection provides an excellent model for meaningful conservation of sage-grouse if fully supported and implemented. We believe that when fully realized, this effort could ameliorate many threats to the Greater sage-grouse in Wyoming. We fully recognize and appreciate your commitment and financial obligation to this important conservation effort. This long-term, science-based vision for the conservation of greater sage-grouse has set the stage for similar conservation efforts across the species' range, a notable feat onto itself.

We look forward to continuing to work with the State of Wyoming on Greater sage-grouse conservation. The Service again commends the State's leadership for your proactive and insightful efforts and your commitment to the long-term conservation of this species.

If you have any questions regarding the information provided here, please do not hesitate to contact me at 307-772-2374, extension 234, or Pat Deibert of my staff at extension 226.

Sincerely,

/s/ R. Mark Sattelberg

R. Mark Sattelberg  
Field Supervisor  
Wyoming Field Office

cc: BLM, Acting State Director, Cheyenne, WY (D. Simpson)  
USFS, Regional Forester-Region 2 (R. Cables)  
USFS, Regional Forester-Region 4 (H. Forsgren)  
WGFD, Director, Cheyenne, WY (S. Talbott)  
Governor's Sage Grouse Implementation Team, Chair, Riverton, WY (B. Budd)

### **K.3 A Report on National Greater Sage-Grouse Conservation Measures**



# **A Report on National Greater Sage-Grouse Conservation Measures**

**Produced by:**

**Sage-grouse National Technical Team**

**December 21, 2011**

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Introduction  
National Technical Team

## Introduction

Sagebrush landscapes have changed dramatically over the last two centuries. The vast expanses of sagebrush crossed by early European settlers and used by sage-grouse have been lost, fragmented, or altered due to invasive plants, changes in fire regimes, and impact of land uses (Knick et al. 2003, Knick and Connelly 2011a). As a consequence, sage-grouse and many other wildlife species that depend on sagebrush have undergone long-term range-wide population declines. Sage-grouse populations now occupy approximately one-half of their pre-European settlement distribution (Schroeder et al. 2004). Anthropogenic habitat impacts and lack of regulatory mechanisms to protect against further losses provided the basis for warranting listing under the Endangered Species Act (ESA) in 2010 (75 FR 13910). The need to address higher priority species and limited funding precluded immediate listing action. However, a litigation settlement requires that a listing decision be made by the U.S. Fish and Wildlife Service (USFWS) by September, 2015.

The Bureau of Land Management (BLM) manages approximately 50% of the sagebrush habitats used by sage-grouse (Knick 2011). Therefore, management actions by BLM in concert with other state and federal agencies, and private land owners play a critical role in the future trends of sage-grouse populations. To ensure BLM management actions are effective and based on the best available science, the National Policy Team created a National Technical Team (NTT) in August of 2011. The BLM's objective for chartering this planning strategy effort was to develop new or revised regulatory mechanisms, through Resource Management Plans (RMPs), to conserve and restore the greater sage-grouse and its habitat on BLM-administered lands on a range-wide basis over the long term. The National Greater Sage-Grouse Planning Strategy Charter charged the NTT to serve as a scientific and technical forum to:

- Understand current scientific knowledge related to the greater sage-grouse.
- Provide specialized sources of expertise not otherwise available.
- Provide innovative scientific perspectives concerning management approaches for the greater sage-grouse.
- Provide assurance that relevant science is considered, reasonably interpreted, and accurately presented; and that uncertainties and risks are acknowledged and documented.
- Provide science and technical assistance to the Regional Management Team (RMT) and Regional Interdisciplinary Team (RIDT), on request.
- Articulate conservation objectives for the greater sage-grouse in measurable terms to guide overall planning.

Introduction  
National Technical Team

- Identify science-based management considerations for the greater sage-grouse (e.g., conservation measures) that are necessary to promote sustainable sage-grouse populations, and which focus on the threats (75 FR 13910) in each of the management zones.<sup>1</sup>

The National Technical Team (NTT) met from August 28 through September 2, 2011, in Denver, Colorado, and a subset of the team met December 5-8 in Phoenix, Arizona, to further articulate the scientific basis for the conservation measures. Members of the team included resource specialists and scientists from the BLM, State Fish and Wildlife Agencies, USFWS, Natural Resources Conservation Service (NRCS) and U.S. Geological Survey (USGS).

This document provides the latest science and best biological judgment to assist in making management decisions. Fortunately, recent emphasis on sage-grouse conservation has resulted in a substantial number of publications dealing with a variety of aspects of sage-grouse ecology and management, summarized in the 2010 listing petition (75 FR 13910), as well as Knick and Connelly (2011b). Habitat requirements and other life history aspects of sage-grouse, excerpted from the USFWS listing decision (75 FR 13910), are summarized in Appendix A to provide context for the proposed conservation measures. We have attempted to describe the scientific basis for the conservation measures proposed within each program area. Perspectives on the nature and interpretation of the available science are in Appendix B.

The conservation measures described in this report are not an end point but, rather, a starting point to be used in the BLM's planning processes. Due to time constraints, they are focused primarily on priority sage-grouse habitat areas. General habitat conservation areas were not thoroughly discussed or vetted through the NTT, and the concept of connectivity between priority sage-grouse habitat areas will need more development through the BLM planning process.

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<sup>1</sup> Identified in the Western Association of Fish and Wildlife Agencies (WAFWA) Conservation Strategy (Stiver et al. 2006).



Goals and Objectives  
National Technical Team

## Goals and Objectives

The BLM, along with a host of other state and federal agencies who participated in development of the Greater Sage-grouse Comprehensive Conservation Strategy (Stiver et al. 2006), endorsed the goal of that document which was “to maintain and enhance populations and distribution of sage-grouse by protecting and improving sagebrush habitats and ecosystems that sustain these populations”. Although it was understood that at least in the short term this goal of maintaining sage-grouse population size and distribution as based on trends from 1965 - 2003, or enhancing above these levels was aspirational, the NTT supports it as a guiding philosophy against which management actions and policies of BLM should be weighed. Therefore, the conservation measures and strategies that follow assume the goal and objectives below.

### Goal

**Maintain and/or increase sage-grouse abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in cooperation with other conservation partners.**

Until such time as more specific conservation objectives relative to sage-grouse distribution or abundance by sage-grouse management zone, state, or population are developed, BLM will strive to maintain or increase current distribution and abundance of sage-grouse on BLM administered lands in support of the range-wide goals. BLM will specifically address threats identified by the Fish and Wildlife Service in their 2010 listing decision (75 FR 13910).

Sage-grouse populations have the greatest chance of persisting when landscapes are dominated by sagebrush and natural or human disturbances are minimal (Aldridge et al. 2008, Knick and Hanser 2011, Wisdom et al. 2011). Within priority habitat, a minimum range of 50-70% of the acreage in sagebrush cover is required for long-term sage-grouse persistence (Aldridge et al. 2008, Doherty et al. 2010, Wisdom et al. 2011). Fire and invasion by exotic grasses are widespread causes for habitat loss, particularly in the western part of the sage-grouse range (Miller et al. 2011). Human land use, including tillage agriculture, historic grazing management, energy development, roads and power line infrastructure, and even recreation have contributed both individually and cumulatively to lower numbers of sage-grouse across the range (75 FR 13910, Knick et al. 2011).

### New Paradigm

Through the establishment of the National Sage-grouse Planning Strategy, the Bureau of Land Management has committed to a new paradigm in managing the sagebrush landscape. That new paradigm will require collaborative conservation efforts among private, state, tribal, and other federal partners to conserve sage-grouse. Land uses, habitat treatments, and anthropogenic disturbances will need to be managed below thresholds necessary to conserve not only local sage-grouse populations, but sagebrush communities and landscapes as well. Management priorities will need to be shifted and balanced to maximize benefits to



Goals and Objectives  
National Technical Team

sage-grouse habitats and populations in priority habitats. Adequacy of management adjustments will be measured by science-based effectiveness monitoring of the biological response of sagebrush landscapes and sage-grouse populations. Ultimately, success will be measured by the maintenance and enhancement of sage-grouse populations well into the future.

**Objectives**

The overall objective is to protect priority sage-grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage-grouse. Priority sage-grouse habitats are areas that have the highest conservation value to maintaining or increasing sage-grouse populations. These areas would include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors. These areas have been, or will be identified by state fish and wildlife agencies in coordination with respective BLM offices. Priority habitat designations must reflect the vision, goals and objectives of this overall plan if the conservation measures are to be effective. Additionally, there is an opportunity for synergy and collaboration with WAFWA in order to identify a consistent way to designate priority sage-grouse habitat areas and develop a range-wide priority habitat area map. This collaborative and overarching approach could help ensure activities immediately outside the priority areas do not impact priority habitat.

To reach this objective, it will be necessary to achieve the following sub-objectives for priority habitat:

- Designate priority sage-grouse habitats for each WAFWA management zone (Stiver et al. 2006) across the current geographic range of sage-grouse that are large enough to stabilize populations in the short term and enhance populations over the long term.
- To maintain or increase current populations, manage or restore priority areas so that at least 70% of the land cover provides adequate sagebrush habitat to meet sage-grouse needs.
- Develop quantifiable habitat and population objectives with WAFWA and other conservation partners at the management zone and/or other appropriate scales. Develop a monitoring and adaptive management strategy to track whether these objectives are being met, and allow for revisions to management approaches if they are not.<sup>ii</sup>
- Manage priority sage-grouse habitats so that discrete anthropogenic disturbances cover less than 3% of the total sage-grouse habitat regardless of ownership. Anthropogenic features include but are not limited to paved highways, graded gravel roads, transmission lines, substations, wind

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<sup>i</sup> As population trends within each Management Zone respond, long-term success can be judged based on comparisons with data from the 1965-2003 period for that specific Management Zone (Stiver et al., 2006).

<sup>ii</sup> Professional judgment as derived from Holloran 2005, Walker et al. 2007, Doherty et al. 2008, Doherty et al. 2011, Naugle et al. 2011a,b.

Goals and Objectives  
National Technical Team

turbines, oil and gas wells, geothermal wells and associated facilities, pipelines, landfills, homes, and mines.<sup>iii</sup>

- In priority habitats where the 3% disturbance threshold is already exceeded from any source, no further anthropogenic disturbances will be permitted by BLM until enough habitat has been restored to maintain the area under this threshold (subject to valid existing rights).
- In this instance, an additional objective will be designated for the priority area to prioritize and reclaim/restore anthropogenic disturbances so that 3% or less of the total priority habitat area is disturbed within 10 years.

*Note to add context to above objective:* Disturbance can be described within categories as discrete (having a distinct measureable impact in space and time) or diffuse (pressure is exerted over broad spatial or temporal scales) (Turner and Gardner 1991). Most anthropogenic disturbance (roads, power lines, oil/gas wells, tall structures) are discrete disturbances. Livestock grazing is a diffuse disturbance. Fire can be either discrete or diffuse depending on its characteristics and the scales at which it is measured. Sage-grouse are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.

Spatial and temporal scales are important components in measuring and interpreting the effects of disturbance (Johnson and St-Laurent 2011). A discrete event might be significant to individuals or local communities but have little effect on the larger population or region (See Figure 2 in Appendix B). Therefore, defining the spatial extent (the region bounding the analysis), spatial and temporal scale (the dimension of the event), and the resolution (the precision of the measurement) are fundamental inputs into any assessment of disturbance (Wheatley and Johnson 2009).

Two spatial extents for measuring anthropogenic disturbance will be used: 1) the area contained within individual priority areas and 2) each one-mile section within the priority area. This hierarchical arrangement allows concentrated anthropogenic disturbance to exceed recommended thresholds within a smaller area, yet still maintain an overall level at the scale to which sage-grouse respond within priority areas.

- (1) Large-scale disturbances that impact sage grouse distribution and abundance at any level will not be permitted within priority areas (subject to valid existing rights). Other, smaller scale proposed anthropogenic disturbances will not disturb more than a total of 3% of the acreage within each priority area.

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<sup>iii</sup> Professional judgment as derived from Holloran 2005, Walker et al. 2007, Doherty et al. 2008, Doherty et al. 2011, Naugle et al. 2011a,b.



Goals and Objectives  
National Technical Team

- (2) Proposed anthropogenic surface disturbances within an individual priority area will be encouraged to occur in areas of existing development, or areas of non-suitable habitats. Suitable buffers, depending on the occurrence of adjacent seasonal habitats and local information (e.g. migratory vs. non-migratory populations; [Connelly et al. 2000]) may be applied in siting a proposed anthropogenic surface disturbance to protect surrounding suitable, undisturbed habitats.
- (3) Concentrating or clustering disturbances locally while maintaining total disturbance below 3% at the priority habitat scale may cause some one-mile<sup>2</sup> analysis sections to exceed the 3% anthropogenic disturbance goal. For example, a sand and gravel mine can result in intensive development of 40 acres, effectively rendering that area unsuitable for sage-grouse. The actual 40-acre disturbance may not push total anthropogenic disturbance to more than 3% for the entire priority area, but obviously has a significant local impact. In these situations, 40 acres of off-site mitigation will be necessary to offset this loss of habitat. The priority is to implement off-site mitigation within the priority sage-grouse habitat, followed by general sage-grouse habitat.

If a project proponent agrees to site proposed anthropogenic surface disturbance within areas of existing development or areas of non-suitable habitat in a priority area, and the resulting localized total surface disturbance exceeds 3% (but the anthropogenic surface disturbance of the entire priority area does not exceed 3%), the need for off-site mitigation should be evaluated on a case-by-case basis.

Additionally, there are sub-objectives that must be met in general sage-grouse habitat. General sage-grouse habitat is occupied (seasonal or year-round) habitat outside of priority habitat. These areas have been, or will be identified by state fish and wildlife agencies in coordination with respective BLM offices.

It will be necessary to achieve the following sub-objectives for general habitat:

- Quantify and delineate general habitat for capability to provide connectivity among priority areas (Knick and Hanser 2011).
- Conserve, enhance or restore sage-grouse habitat and connectivity (Knick and Hanser 2011) to promote movement and genetic diversity, with emphasis on those habitats occupied by sage-grouse.
- Assess general sage-grouse habitats to determine potential to replace lost priority habitat caused by perturbations and/or disturbances and provide connectivity (Knick and Hanser 2011) between priority areas.
  - These habitats should be given some priority over other general sage-grouse habitats that provide marginal or substandard sage-grouse habitat.



Goals and Objectives  
National Technical Team

- Restore historical habitat functionality to support sage-grouse populations guided by objectives to maintain or enhance connectivity. Total area and locations will be determined at the Land Use Plan level.
- Enhance general sage-grouse habitat such that population declines in one area are replaced elsewhere within the habitat.

Conservation Measures/Proposed Planning Decisions  
National Technical Team

## Conservation Measures

The following conservation measures are designed to achieve population and habitat objectives stated in this report. They are organized by resource programs.

### Travel and Transportation

The Travel and Transportation program is principally focused on road networks within the sage-grouse range. Roads can range from state or interstate highways to gravel and two-track roads. Within the sage-grouse range, 95% of the mapped sagebrush habitats are within 2.5 km (1.55 miles) of a mapped road; density of secondary roads exceeds 5 km/km<sup>2</sup> (3.1 miles/247 acres) in some regions (Knick et al. 2011).

Roads have multiple impacts on wildlife in terrestrial ecosystems, including:

- 1) Increased mortality from collision with vehicles;
- 2) Changes in behavior;
- 3) Loss, fragmentation, and alteration of habitat;
- 4) Spread of exotic species; and
- 5) Increased human access, resulting in facilitation of additional alteration and use of habitats by humans (Formann and Alexander 1998, Jackson 2000, Trombulak and Frissel 2000).

The effect of roads can be expressed directly through changes in habitat and sage-grouse populations and indirectly through avoidance behavior because of noise created by vehicle traffic (Lyon and Anderson 2003, 75 FR 13910).

#### Priority sage-grouse habitat areas

- Limit motorized travel to designated roads, primitive roads, and trails at a minimum.
- Travel management should evaluate the need for permanent or seasonal road or area closures.
- Complete activity level plans within five years of the record of decision. During activity level planning, where appropriate, designate routes with current administrative/agency purpose or need to administrative access only.
- Limit route construction to realignments of existing designated routes if that realignment has a minimal impact on sage-grouse habitat, eliminates the need to construct a new road, or is necessary for motorist safety
- Use existing roads, or realignments as described above to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing roads, then build any new road constructed to the absolute minimum standard necessary, and add the surface disturbance to the total disturbance in the priority area. If that disturbance exceeds 3 % for that area, then make additional, effective mitigation necessary to offset the resulting loss of sage-grouse habitat (see Objectives).



Conservation Measures/Proposed Planning Decisions  
National Technical Team

- Allow no upgrading of existing routes that would change route category (road, primitive road, or trail) or capacity unless the upgrading would have minimal impact on sage-grouse habitat, is necessary for motorist safety, or eliminates the need to construct a new road.
- Conduct restoration of roads, primitive roads and trails not designated in travel management plans. This also includes primitive route/roads that were not designated in Wilderness Study Areas and within lands with wilderness characteristics that have been selected for protection.
- When reseeding roads, primitive roads and trails, use appropriate seed mixes and consider the use of transplanted sagebrush.

## Recreation

Recreational activities in sagebrush habitats range from hiking, camping and hunting to lek viewing, and off-highway vehicle (OHV) use. Many of these activities are benign uses in sagebrush habitats. However, excessive use, such as repeated disturbance to leks for viewing that disrupts sage-grouse breeding activities, can have negative effects (75 FR 13910). Off-trail recreation by OHV users can fragment habitat and create corridors for spread of exotic plant species (Knick et al. 2011).

### *Special Recreation Permits (SRP)*

- Only allow SRPs that have neutral or beneficial affects to priority habitat areas.

## Lands/Realty

The Lands and Realty program primarily influences rights-of-way (ROWs), land tenure adjustments, and proposed land withdrawals. Existing and proposed developments for ROWs (such as powerlines, pipelines, and renewable energy projects) and access to various mineral claims or energy development locations have the potential to cause habitat loss and fragmentation that decreases habitat and population connectivity. Roads also create corridors that facilitate spread of exotic plant species (Gelbard and Belnap 2003). In addition, roads and infrastructure networks can increase sage-grouse mortality from increased predation and collisions with vehicles. Sage-grouse may avoid areas because of noise from vehicle traffic (Lyon and Anderson 2003). Adjustments for land tenure and strategically-located land withdrawals can be used to increase connectivity within sage-grouse populations and sagebrush habitats (Knick and Hanser 2011). In addition, land acquisitions and withdrawals may be important conservation strategies because increased development on private lands, which is not subject to mitigation, will focus greater needs for conservation of sage-grouse and sagebrush on public lands (Knick et al. 2011).

### *Rights of Way*

#### Priority sage-grouse habitat areas

- Make priority sage-grouse habitat areas exclusion areas for new ROWs permits. Consider the following exceptions:



Conservation Measures/Proposed Planning Decisions  
National Technical Team

- Within designated ROW corridors encumbered by existing ROW authorizations: new ROWs may be co-located only if the entire footprint of the proposed project (including construction and staging), can be completed within the existing disturbance associated with the authorized ROWs.
- Subject to valid, existing rights: where new ROWs associated with valid existing rights are required, co-locate new ROWs within existing ROWs or where it best minimizes sage-grouse impacts. Use existing roads, or realignments as described above, to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing roads, then build any new road constructed to the absolute minimum standard necessary, and add the surface disturbance to the total disturbance in the priority area. If that disturbance exceeds 3% for that area, then make additional effective mitigation necessary to offset the resulting loss of sage-grouse.
- Evaluate and take advantage of opportunities to remove, bury, or modify existing power lines within priority sage-grouse habitat areas. Sage-grouse may avoid powerlines because of increased predation risk (Steenhof et al. 1993, Lammers and Collopy 2007). Powerlines effectively influence (direct physical area plus estimated area of effect due to predator movements) at least 39% of the sage-grouse range (Knick et al. 2011). Deaths resulting from collisions with powerlines were an important source of mortality for sage-grouse in southeastern Idaho (Beck et al. 2006, 75 FR 13910)
- Where existing leases or ROWs have had some level of development (road, fence, well, etc.) and are no longer in use, reclaim the site by removing these features and restoring the habitat.

*Planning Direction Note:* While engaged in this sage-grouse EIS planning process, relocate existing designated ROW corridors crossing priority sage-grouse habitat void of any authorized ROWs, outside of the priority habitat area. If relocation is not possible, undesignate that entire corridor during the planning process.

General sage-grouse habitat areas

- Make general sage-grouse habitat areas “avoidance areas” for new ROWs.
- Where new ROWs are necessary, co-locate new ROWs within existing ROWs where possible.

**Land Tenure Adjustment**

Priority sage-grouse habitat areas

- Retain public ownership of priority sage-grouse habitat. Consider exceptions where:
  - There is mixed ownership, and land exchanges would allow for additional or more contiguous federal ownership patterns within the priority sage-grouse habitat area.
  - Under priority sage-grouse habitat areas with minority federal ownership, include an additional, effective mitigation agreement for any disposal of federal land. As a final preservation measure consideration should be given to pursuing a permanent conservation easement.

Conservation Measures/Proposed Planning Decisions  
National Technical Team

- Where suitable conservation actions cannot be achieved, seek to acquire state and private lands with intact subsurface mineral estate by donation, purchase or exchange in order to best conserve, enhance or restore sage-grouse habitat.

***Proposed Land Withdrawals***

Priority sage-grouse habitat areas

- Propose lands within priority sage-grouse habitat areas for mineral withdrawal.
- Do not approve withdrawal proposals not associated with mineral activity unless the land management is consistent with sage-grouse conservation measures. (For example; in a proposed withdrawal for a military training range buffer area, manage the buffer area with sage-grouse conservation measures.)

**Range Management**

Potential impacts of herbivory on sage-grouse and their habitat include:

- 1) Long-term effects of historic overgrazing on sagebrush habitat;
- 2) Sage-grouse habitat changes due to herbivory;
- 3) Direct effects of herbivores on sage-grouse, such as trampling of nests and eggs;
- 4) Altered sage-grouse behavior due to presence of herbivores; and
- 5) Impacts to sage-grouse and sage-grouse behavior from structures associated with grazing management (Beck and Mitchell 2000).

Managing livestock grazing to maintain residual cover of herbaceous vegetation so as to reduce predation during nesting may be the most beneficial for sage-grouse populations (Beck and Mitchell 2000, Aldridge and Brigham 2003). Other management objectives that control livestock movements and grazing intensities can be achieved broadly through rotational grazing patterns or locally through water and salt placements (Beck and Mitchell 2000). Treatments used to manipulate vegetation ultimately may have far greater effect on sage-grouse through long-term habitat changes rather than direct impacts of grazing itself (Freilich et al. 2003, Knick et al. 2011). An important objective in managing livestock grazing is to maintain residual cover of herbaceous vegetation to reduce predation during nesting (Beck and Mitchell 2000) and to maintain the integrity of riparian vegetation and other wetlands (Crawford et al. 2004). Proper livestock management (timing, location, and intensity) can assist in meeting sage-grouse habitat objectives and reduce fuels (Briske et al. 2011).

- Within priority sage-grouse habitat, incorporate sage-grouse habitat objectives and management considerations into all BLM grazing allotments through AMPs or permit renewals.



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- Work cooperatively on integrated ranch planning within sage-grouse habitat so operations with deeded/BLM allotments can be planned as single units.
- Prioritize completion of land health assessments and processing grazing permits within priority sage-grouse habitat areas. Focus this process on allotments that have the best opportunities for conserving, enhancing or restoring habitat for sage-grouse. Utilize Ecological Site Descriptions (ESDs) to conduct land health assessments to determine if standards of range-land health are being met.
- Conduct land health assessments that include (at a minimum) indicators and measurements of structure/condition/composition of vegetation specific to achieving sage-grouse habitat objectives (Doherty et al. 2011). If local/state seasonal habitat objectives are not available, use sage-grouse habitat recommendations from Connelly et al. 2000b and Hagen et al. 2007.

***Implementing Management Actions after Land Health and Habitat Evaluations***

- Develop specific objectives to conserve, enhance or restore priority sage-grouse habitat based on ESDs and assessments (including within wetlands and riparian areas). If an effective grazing system that meets sage-grouse habitat requirements is not already in place, analyze at least one alternative that conserves, restores or enhances sage-grouse habitat in the NEPA document prepared for the permit renewal (Doherty et al. 2011b, Williams et al. 2011).
- Manage for vegetation composition and structure consistent with ecological site potential and within the reference state to achieve sage-grouse seasonal habitat objectives.
- Implement management actions (grazing decisions, AMP/Conservation Plan development, or other agreements) to modify grazing management to meet seasonal sage-grouse habitat requirements (Connelly et al. 2011c). Consider singly, or in combination, changes in:
  - 1) Season or timing of use;
  - 2) Numbers of livestock (includes temporary non-use or livestock removal);
  - 3) Distribution of livestock use;
  - 4) Intensity of use; and
  - 5) Type of livestock (e.g., cattle, sheep, horses, llamas, alpacas and goats) (Briske et al. 2011).
- During drought periods, prioritize evaluating effects of the drought in priority sage-grouse habitat areas relative to their needs for food and cover. Since there is a lag in vegetation recovery following drought (Thurow and Taylor 1999, Cagney et al. 2010), ensure that post-drought management allows for vegetation recovery that meets sage-grouse needs in priority sage-grouse habitat areas.



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**Riparian Areas and Wet Meadows**

- Manage riparian areas and wet meadows for proper functioning condition within priority sage-grouse habitats.
  - Within priority and general sage-grouse habitats, manage wet meadows to maintain a component of perennial forbs with diverse species richness relative to site potential (e.g., reference state) to facilitate brood rearing. Also conserve or enhance these wet meadow complexes to maintain or increase amount of edge and cover within that edge to minimize elevated mortality during the late brood rearing period (Hagen et al. 2007, Kolada et al. 2009, Atamian et al. 2010).
- Where riparian areas and wet meadows meet proper functioning condition, strive to attain reference state vegetation relative to the ecological site description.
  - For example: Within priority sage-grouse habitat, reduce hot season grazing on riparian and meadow complexes to promote recovery or maintenance of appropriate vegetation and water quality. Utilize fencing/herding techniques or seasonal use or livestock distribution changes to reduce pressure on riparian or wet meadow vegetation used by sage-grouse in the hot season (summer) (Aldridge and Brigham 2002, Crawford et al. 2004, Hagen et al. 2007).
- Authorize new water development for diversion from spring or seep source only when priority sage-grouse habitat would benefit from the development. This includes developing new water sources for livestock as part of an AMP/conservation plan to improve sage-grouse habitat.
- Analyze springs, seeps and associated pipelines to determine if modifications are necessary to maintain the continuity of the predevelopment riparian area within priority sage-grouse habitats. Make modifications where necessary, considering impacts to other water uses when such considerations are neutral or beneficial to sage-grouse.

**Treatments to Increase Forage for Livestock/Wild Ungulates**

Priority sage-grouse habitat areas

- Only allow treatments that conserve, enhance or restore sage-grouse habitat (this includes treatments that benefit livestock as part of an AMP/Conservation Plan to improve sage-grouse habitat.<sup>iv</sup>
- Evaluate the role of existing seedings that are currently composed of primarily introduced perennial grasses in and adjacent to priority sage-grouse habitats to determine if they should be restored to sagebrush or habitat of higher quality for sage-grouse. If these seedings are part of an AMP/

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<sup>iv</sup> Conserve or enhance means to allow no degradation and can mean that the improvement or livestock supplement is part of a grazing/AMP/Conservation Plan that facilitates meeting sage-grouse habitat objectives within a pasture or allotment.

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Conservation Plan or if they provide value in conserving or enhancing the rest of the priority habitats, then no restoration would be necessary. Assess the compatibility of these seedings for sage-grouse habitat or as a component of a grazing system during the land health assessments (Davies et al. 2011).

- For example: Some introduced grass seedings are an integral part of a livestock management plan and reduce grazing pressure in important sagebrush habitats or serve as a strategic fuels management area.

***Structural Range Improvements and Livestock Management Tools***

Priority sage-grouse habitat areas

- Design any new structural range improvements and location of supplements (salt or protein blocks) to conserve, enhance, or restore sage-grouse habitat through an improved grazing management system relative to sage-grouse objectives. Structural range improvements, in this context, include but are not limited to: cattleguards, fences, exclosures, corrals or other livestock handling structures; pipelines, troughs, storage tanks (including moveable tanks used in livestock water hauling), windmills, ponds/reservoirs, solar panels and spring developments. Potential for invasive species establishment or increase following construction must be considered in the project planning process and monitored and treated post-construction.
- When developing or modifying water developments, use best management practices (BMPs, see Appendix C) to mitigate potential impacts from West Nile virus (Clark et al. 2006, Doherty 2007, Walker et al. 2007b, Walker and Naugle 2011).
- Evaluate existing structural range improvements and location of supplements (salt or protein blocks) to make sure they conserve, enhance or restore sage-grouse habitat.
  - To reduce outright sage-grouse strikes and mortality, remove, modify or mark fences in high risk areas within priority sage-grouse habitat based on proximity to lek, lek size, and topography (Christiansen 2009, Stevens 2011).
  - Monitor for, and treat invasive species associated with existing range improvements (Gelbard and Belnap 2003 and Bergquist et al. 2007).

***Retirement of Grazing Privileges***

- Maintain retirement of grazing privileges as an option in priority sage-grouse areas when base property is transferred or the current permittee is willing to retire grazing on all or part of an allotment. Analyze the adverse impacts of no livestock use on wildfire and invasive species threats (Crawford et al. 2004) in evaluating retirement proposals.

*Planning direction Note:* Each planning effort will identify the specific allotment(s) where permanent retirement of grazing privileges is potentially beneficial.



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## Wild Horse and Burro Management

Wild horses and burros have the potential to impact habitats used by sage-grouse by reducing grass, shrub, and forb cover and increasing unpalatable forbs and exotic plants including cheatgrass (Beever and Aldridge 2011). Effects of wild equids on habitats may be especially pronounced during periods of drought or vegetation stress. Wild equids have different grazing patterns than domestic livestock, thus increasing the magnitude of grazing across the entire landscape (Beever and Aldridge 2011).

### Ongoing Authorizations/Activities

- Manage wild horse and burro population levels within established Appropriate Management Levels (AML).
- Prioritize gathers in priority sage-grouse habitat, unless removals are necessary in other areas to prevent catastrophic environmental issues, including herd health impacts.

### Proposed Authorization/Activities

- Within priority sage-grouse habitat, develop or amend herd management area plans (HMAPs) to incorporate sage-grouse habitat objectives and management considerations for all BLM herd management areas (HMAs).
  - For all HMAs within priority sage-grouse habitat, prioritize the evaluation of all AMLs based on indicators that address structure/condition/composition of vegetation and measurements specific to achieving sage-grouse habitat objectives.
- Coordinate with other resources (Range, Wildlife, and Riparian) to conduct land health assessments to determine existing structure/condition/composition of vegetation within all BLM HMAs.
- When conducting NEPA analysis for wild horse and burro management activities, water developments or other rangeland improvements for wild horses in priority sage-grouse habitat, address the direct and indirect effects to sage-grouse populations and habitat. Implement any water developments or rangeland improvements using the criteria identified for domestic livestock identified above in priority habitats.

## Minerals

The primary potential risks to sage-grouse from energy and mineral development are:

- 1) Direct disturbance, displacement, or mortality of grouse;
- 2) Direct loss of habitat, or loss of effective habitat through fragmentation and reduced habitat patch size and quality; and
- 3) Cumulative landscape-level impacts (Bergquist et al. 2007, Walston et al. 2009, Naugle et al. 2011).

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There is strong evidence from the literature to support that surface-disturbing energy or mineral development within priority sage-grouse habitats is not consistent with a goal to maintain or increase populations or distribution. None of the published science reports a positive influence of development on sage-grouse populations or habitats. Breeding populations are severely reduced at well pad densities commonly permitted (Holloran 2005, Walker et al. 2007a). Magnitude of losses varies from one field to another, but findings suggest that impacts are universally negative and typically severe.

Mechanisms that lead to avoidance and decreased fitness have not been empirically tested but rather suggested from multiple correlative and observational studies. For example, abandonment may increase if leks are repeatedly disturbed by raptors perching on power lines near leks (Ellis 1984), by vehicle traffic on nearby roads (Lyon and Anderson 2003), or by noise and human activity associated with energy development during the breeding season (Remington and Braun 1991, Holloran 2005, Kaiser 2006, Blickley and Patricelli *In review*). One recently completed research study in Wyoming (Blickley et al. *In press*), experimentally validates noise from natural gas drilling and roads resulted in a decline of 29% and 73% respectively in male peak attendance at leks relative to paired controls; declines were immediate and sustained throughout the experiment with low statistical support for a cumulative effect of noise over time. Collisions with nearby power lines and vehicles and increased predation by raptors may also increase mortality of birds at leks (Connelly et al. 2000). Alternatively, roads and power lines may indirectly affect lek persistence by altering productivity of local populations or survival at other times of the year. For example, sage-grouse mortality associated with power lines and roads occurs year-round (Beck et al. 2006, Aldridge and Boyce 2007), and ponds created by coal bed natural gas development may increase the risk of West Nile virus mortality in late summer (Walker et al. 2004, Zou et al. 2006, Walker et al. 2007b). Loss and degradation of sagebrush habitat can also reduce carrying capacity of local breeding populations (Swenson et al. 1987, Braun 1998, Connelly et al. 2000, 2000b, Crawford et al. 2004). Birds may avoid otherwise suitable habitat as the density of roads, power lines, or energy development increases (Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Doherty et al. 2008, Carpenter et al. 2010).

Negative responses of sage-grouse to energy development were consistent among studies regardless of whether they examined lek dynamics or demographic rates of specific cohorts within populations. Sage-grouse populations decline when birds avoid infrastructure in one or more seasons (Doherty et al. 2008, Carpenter et al. 2010) and when cumulative impacts of development negatively affect reproduction or survival (Aldridge and Boyce 2007), or both demographic rates (Lyon and Anderson 2003, Holloran 2005, Holloran et al. 2010). Avoidance of energy development at the scale of entire oil and gas fields should not be considered a simple shift in habitat use but rather a reduction in the distribution of sage-grouse (Walker et al. 2007). Avoidance is likely to result in true population declines if density dependence, competition, or displacement of birds into poorer-quality adjacent habitats lowers survival or reproduction (Holloran and Anderson 2005, Aldridge and Boyce 2007, Holloran et al. 2010). High site fidelity in sage-grouse also suggests that unfamiliarity with new habitats may also reduce survival, as in other grouse species (Yoder et al. 2004). Sage-grouse in the Powder River Basin were 1.3 times more likely to occupy winter habitats that had not been developed for energy (12 wells per 4 square kilometers or 12 wells per 1.5 square miles), and avoidance of developed areas was most pronounced when it occurred in high-quality winter habitat with abundant sagebrush (Doherty et al. 2008). In a similar study in Alberta, avoidance of otherwise suitable



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wintering habitats within a 1.9-kilometer (1.2 mile) radius of energy development resulted in substantial loss of functional habitat surrounding wells (Carpenter et al. 2010).

Long-term studies in the Pinedale Anticline Project Area in southwest Wyoming present the most complete picture of cumulative impacts and provide a mechanistic explanation for declines in populations. Early in development, nest sites were farther from disturbed than undisturbed leks, the rate of nest initiation from disturbed leks was 24 percent lower than for birds breeding on undisturbed leks, and 26 percent fewer females from disturbed leks initiated nests in consecutive years (Lyon and Anderson 2003). As development progressed, adult females remained in traditional nesting areas regardless of increasing levels of development, but yearlings that had not yet imprinted on habitats inside the gas field avoided development by nesting farther from roads (Holloran 2005). The most recent study confirmed that yearling females avoided infrastructure when selecting nest sites, and yearling males avoided leks inside of development and were displaced to the periphery of the gas field (Holloran et al. 2010). Recruitment of males to leks also declined as distance within the external limit of development increased, indicating a high likelihood of lek loss near the center of developed oil and gas fields (Kaiser 2006). The most important finding from studies in Pinedale was that sage-grouse declines are explained in part by lower annual survival of female sage-grouse and that the impact on survival resulted in a population-level decline (Holloran 2005). High site fidelity but low survival of adult sage-grouse combined with lek avoidance by younger birds (Holloran et al. 2010) resulted in a time lag of 3–4 years between the onset of development activities and lek loss (Holloran 2005). The time lag observed by Holloran (2005) in the Anticline matched that for leks that became inactive 3–4 years after natural gas development in the Powder River Basin (Walker et al. 2007a). Analysis of seven oil and gas fields across Wyoming showed time lags of 2–10 years between activities associated with energy development and its measurable effects on sage-grouse populations (Harju et al. 2010).

Impacts as measured by the number of males attending leks are most severe near the lek, remain discernible out to >4 miles (Holloran 2005, Walker et al. 2007, Tack 2009, Johnson et al. 2011), and often result in lek extirpations (Holloran 2005, Walker et al. 2007). Negative effects of well surface occupancy were apparent out to 3.1 miles, the largest radius investigated, in 2 of 7 study areas in Wyoming (Harju et al. 2010). Curvilinear relationships show that lek counts decreased with distance to the nearest active drilling rig, producing well, or main haul road and that development within 3 to 4 miles of leks decrease counts of displaying males (Holloran 2005). All well-supported models in Walker et al. (2007) indicate a strong negative effect, estimated as proportion of development within either 0.5 miles or 2 miles, on lek persistence. A model with development at 4 miles had less support, but the regression coefficient indicated that negative impacts within 4 miles were still apparent. Two additional studies reported negative impacts apparent out to 8 miles on large lek occurrence (>25 males; Tack 2009) and out to 11.7 miles on lek trends (Johnson et al. 2011), the largest scales evaluated.

Past BLM conservation measures have focused on 0.25 mile No Surface Occupancy (NSO) buffers around leks, and timing stipulations applied to 0.6 mile buffers around leks to protect both breeding and nesting activities. Given impacts of large scale disturbances described above that occur across seasons and impact all demographic rates, applying NSO or other buffers around leks at any distance is unlikely to be effective. Even if this approach were to be continued, it should be noted that protecting even 75 to >80% of nesting

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hens would require a 4-mile radius buffer (Table 1). Even a 4-mile NSO buffer would not be large enough to offset all the impacts reviewed above. A 4-mile NSO likely would not be practical given most leases are not large enough to accommodate a buffer of this size, and lek spacing within priority habitats is such that lek-based buffers may overlap and preclude all development.

We do not include timing restrictions on construction and drilling during the breeding season because they do not prevent impacts of infrastructure (e.g., avoidance, mortality) at other times of the year, during the production phase, or in other seasonal habitats that are crucial for population persistence (e.g., winter; Walker et al. 2007). Seasonal timing restrictions may be effective during the exploration phase. Instead, we recommend excluding mineral development and other large scale disturbances from priority habitats where possible, and where it is not limit disturbance as much as possible.

For these reasons, we believe the conservation strategy most likely to meet the objective of maintaining or increasing sage-grouse distribution and abundance is to exclude energy development and other large scale disturbances from priority habitats, and where valid existing rights exist, minimize those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less.

Table 1. Distance Of Greater Sage-Grouse Nests From Lek Of Capture <sup>1</sup>			
% Nests within 2-mi. radius	% Nests Within 4-mi. radius	Location	Study
46.4 (n = 13/28)	85.7 (n = 24/28)	North Park, CO	Peterson (1980)
59.5 (n = 182/306)	85 (n = 260/306)	Idaho	Autenrieth (1981)
71.8 (n = 51/71)	90.1 (n = 64/71)	North Park, CO	Giesen (1995)
49.5 (n = 192/388)	77.1 (n = 299/388)	Moffat County, CO	Thompson et al. 2005, Thompson 2006
48.4 (n = 15/31)	96.8 (n = 30/31)	Eagle and South Routt Counties, CO	Graham and McConnell 2004, Graham and Jones 2005
44.7 (n = 152/340)	74.4 (n = 243/340)	Wyoming	Holloran and Anderson (2005)
35.5 (n = 86/238)	61 (n = 145/238) @ 3 miles (data unavailable at this time for 4 miles)	Montana	Moynahan and Lindberg (2006)
35.5 (n = 27/76)	76.3 (n = 58/76)	Montana	Tack (2009)
50 (n = 495)	>80 (n = 495)	Oregon	Hagen (2011)

<sup>1</sup>Data obtained from Colorado Greater Sage-grouse Conservation Plan and additional recent studies/plans.



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### **Fluid Minerals**

#### ***Unleased Federal Fluid Mineral Estate***

##### *Alternative A*

- Close priority sage-grouse habitat areas to fluid mineral leasing. Upon expiration or termination of existing leases, do not accept nominations/expressions of interest for parcels within priority areas.
- Allow geophysical exploration within priority sage-grouse habitat areas to obtain exploratory information for areas outside of and adjacent to priority sage-grouse habitat areas. Allow geophysical operations only by helicopter-portable drilling methods and in accordance with seasonal timing restrictions and/or other restrictions that may apply.

##### *Alternative B*

- Close priority sage-grouse habitat areas to fluid mineral leasing. Consider an exception:
  - When there is an opportunity for the BLM to influence conservation measures where surface and/or mineral ownership is not entirely federally owned (i.e., checkerboard ownership). In this case, a plan amendment may be developed that opens the priority area for new leasing. The plan must demonstrate long-term population increases in the priority area through mitigation (prior to issuing the lease) including lease stipulations, off-site mitigation, etc., and avoid short-term losses that put the sage-grouse population at risk from stochastic events leading to extirpation.
- Allow geophysical exploration within priority sage-grouse habitat areas to obtain exploratory information for areas outside of and adjacent to priority sage-grouse habitat areas. Only allow geophysical operations by helicopter-portable drilling methods and in accordance with seasonal timing restrictions and/or other restrictions that may apply.

#### ***Leased Federal Fluid Mineral Estate***

##### **Priority sage-grouse habitat areas** (with varying levels of exploration & development)

Apply the following conservation measures through Resource Management Plan (RMP) implementation decisions (e.g., approval of an Application for Permit to Drill, Sundry Notice, etc.) and upon completion of the environmental record of review (43 CFR 3162.5), including appropriate documentation of compliance with NEPA. In this process evaluate, among other things:

1. Whether the conservation measure is "reasonable" (43 CFR 3101.1-2) with the valid existing rights; and
2. Whether the action is in conformance with the approved RMP.<sup>v</sup>

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<sup>v</sup> Plan conformance means, "a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or amendment." 43 CFR 1601.0-5(b).

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Provide the following conservation measures as terms and conditions of the approved RMP:

- Do not allow new surface occupancy on federal leases within priority habitats, this includes winter concentration areas (Doherty et al. 2008, Carpenter et al. 2010) during any time of the year.  
Consider an exception:
  - If the lease is entirely within priority habitats, apply a 4-mile NSO around the lek, and limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section.
  - If the entire lease is within the 4-mile lek perimeter, limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section. Require any development to be placed at the most distal part of the lease from the lek, or, depending on topography and other habitat aspects, in an area that is less demonstrably harmful to sage-grouse.
- Apply a seasonal restriction on exploratory drilling that prohibits surface-disturbing activities during the nesting and early brood-rearing season in all priority sage-grouse habitat during this period.
- Do not use Categorical Exclusions (CXs) including under the Energy Policy Act of 2005, Section 390 in priority sage-grouse habitats due to resource conflicts.
- Complete Master Development Plans in lieu of Application for Permit to Drill (APD)-by-APD processing for all but wildcat wells.
- When permitting APDs on existing leases that are not yet developed, the proposed surface disturbance cannot exceed 3% for that area. Consider an exception if:
  - Additional, effective mitigation is demonstrated to offset the resulting loss of sage-grouse (see Objectives).
    - When necessary, conduct additional, effective mitigation in 1) priority sage-grouse habitat areas or – less preferably – 2) general sage-grouse habitat (dependent upon the area-specific ability to increase sage-grouse populations).
    - Conduct additional, effective mitigation first within the same population area where the impact is realized, and if not possible then conduct mitigation within the same Management Zone as the impact, per 2006 WAFWA Strategy – pg 2-17.
- Require unitization when deemed necessary for proper development and operation of an area (with strong oversight and monitoring) to minimize adverse impacts to sage-grouse according to the Federal Lease Form, 3100-11, Sections 4 and 6.
- Identify areas where acquisitions (including subsurface mineral rights) or conservation easements, would benefit sage-grouse habitat.
- Require a full reclamation bond specific to the site. Insure bonds are sufficient for costs relative to reclamation (Connelly et al. 2000, Hagen et al. 2007) that would result in full restoration. Base the reclamation costs on the assumption that contractors for the BLM will perform the work.



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- Make applicable Best Management Practices (BMPs, see Appendix D) mandatory as Conditions of Approval within priority sage-grouse habitat.

### **Solid Minerals**

#### ***Coal***

##### **Priority sage-grouse habitat areas**

- *Surface mines*: Find unsuitable all surface mining of coal under the criteria set forth in 43 CFR 3461.5.
- *Sub-surface mines*: Grant no new mining leases unless all surface disturbances (appurtenant facilities) are placed outside of the priority sage-grouse habitat area.
- For coal mining operations on existing leases:
  - *Sub-surface mining*: in priority sage-grouse habitat areas, place any new appurtenant facilities outside of priority areas. Where new appurtenant facilities associated with the existing lease cannot be located outside the priority sage-grouse habitat area, co-locate new facilities within existing disturbed areas. If this is not possible, then build any new appurtenant facilities to the absolute minimum standard necessary.

##### **General sage-grouse habitat**

- Apply minimization of surface-disturbing or disrupting activities (including operations and maintenance) where needed to reduce the impacts of human activities on important seasonal sage-grouse habitats. Apply these measures during activity level planning.
  - Use additional, effective mitigation to offset impacts as appropriate (determined by local options/needs).

#### ***Locatable Minerals***

##### **Priority sage-grouse habitat areas**

- Propose withdrawal from mineral entry based on risk to the sage-grouse and its habitat from conflicting locatable mineral potential and development.
  - Make any existing claims within the withdrawal area subject to validity patent exams or buy out. Include claims that have been subsequently determined to be null and void in the proposed withdrawal.
  - In plans of operations required prior to any proposed surface disturbing activities, include the following:
    - Additional, effective mitigation in perpetuity for conservation (In accordance with existing policy, WO IM 2008-204). Example: purchase private land and mineral rights or severed subsurface mineral rights within the priority area and deed to US Government).

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- Consider seasonal restrictions if deemed effective.
- Make applicable Best Management Practices (see Appendix E) mandatory as Conditions of Approval within priority sage-grouse habitat.

***Non-energy Leasable Minerals (i.e. sodium, potash)***

Priority sage-grouse habitat areas

- Close priority habitat to non-energy leasable mineral leasing. This includes not permitting any new leases to expand an existing mine.
- For existing non-energy leasable mineral leases, in addition to the solid minerals BMPs (Appendix E), follow the same BMPs applied to Fluid Minerals (Appendix D), when wells are used for solution mining.

***Saleable Mineral Materials***

Priority sage-grouse habitat areas

- Close priority habitat to mineral material sales.
- Restore saleable mineral pits no longer in use to meet sage-grouse habitat conservation objectives.

**Mineral Split Estate**

Priority sage-grouse habitat areas

- Where the federal government owns the mineral estate, and the surface is in non-federal ownership, apply the conservation measures applied on public lands.
- Where the federal government owns the surface, and the mineral estate is in non-federal ownership, apply appropriate Fluid Mineral BMPs (see Appendix D) to surface development.

**Wildfire Suppression, Fuels Management and Fire Rehabilitation**

These programs address the threats resulting from wildfires and post-wildfire effects along with a program (fuels management) designed to try to reduce these impacts. Together these programs provide a significant opportunity to influence sagebrush habitats that benefit sage-grouse. Wildfire, particularly in low elevation Wyoming big sagebrush systems, has resulted in significant habitat loss primarily because of subsequent invasion by cheatgrass and other exotic plant species (Miller et al. 2011). The number of fires and total acreage burned has increased throughout the sage-grouse range (Miller et al. 2011). Long-term monitoring following prescribed fire is important because treatments may not increase either yield or nutritional quality of forbs eaten by sage-grouse, and also may decrease abundance of insects that are important for growth of sage-grouse chicks (Beck et al. 2009, Rhodes et al. 2010). Therefore, it is critical



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not only to conduct management actions that reduce the long-term loss of sagebrush but also to restore and recover burned areas to habitats that will be used by sage-grouse (Pyke 2011). Prescribed fire is a tool that can assist in the recovery of sagebrush habitat in some vegetation types (Davies et al. 2011).

### Fuels Management

#### Priority sage-grouse habitat areas

- Design and implement fuels treatments with an emphasis on protecting existing sagebrush ecosystems.
  - Do not reduce sagebrush canopy cover to less than 15% (Connelly et al. 2000, Hagen et al. 2007) unless a fuels management objective requires additional reduction in sagebrush cover to meet strategic protection of priority sage-grouse habitat and conserve habitat quality for the species. Closely evaluate the benefits of the fuel break against the additional loss of sagebrush cover in the EA process.
  - Apply appropriate seasonal restrictions for implementing fuels management treatments according to the type of seasonal habitats present in a priority area.
  - Allow no treatments in known winter range unless the treatments are designed to strategically reduce wildfire risk around or in the winter range and will maintain winter range habitat quality.
  - Do not use fire to treat sagebrush in less than 12-inch precipitation zones (e.g., Wyoming big sagebrush or other xeric sagebrush species; Connelly et al. 2000, Hagen et al. 2007, Beck et al. 2009). However, if as a last resort and after all other treatment opportunities have been explored and site specific variables allow, the use of prescribed fire for fuel breaks that would disrupt the fuel continuity across the landscape could be considered, in stands where cheatgrass is a very minor component in the understory (Brown 1982).
  - Monitor and control invasive vegetation post-treatment.
  - Rest treated areas from grazing for two full growing seasons unless vegetation recovery dictates otherwise (WGFD 2011).
  - Require use of native seeds for fuels management treatment based on availability, adaptation (site potential), and probability of success (Richards et al. 1998). Where probability of success or native seed availability is low, non-native seeds may be used as long as they meet sage-grouse habitat objectives (Pyke 2011).
  - Design post fuels management projects to ensure long term persistence of seeded or pre-treatment native plants. This may require temporary or long-term changes in livestock grazing management, wild horse and burro management, travel management, or other activities to achieve and maintain the desired condition of the fuels management project (Eiswerth and Shonkwiler 2006).

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- Design fuels management projects in priority sage-grouse habitat to strategically and effectively reduce wildfire threats in the greatest area. This may require fuels treatments implemented in a more linear versus block design (Launchbaugh et al. 2007).

During fuels management project design, consider the utility of using livestock to strategically reduce fine fuels (Diamond et al. 2009), and implement grazing management that will accomplish this objective (Davies et al. 2011 and Launchbaugh et al. 2007). Consult with ecologists to minimize impacts to native perennial grasses.

#### **Fire operations**

- In priority sage-grouse habitat areas, prioritize suppression, immediately after life and property, to conserve the habitat.
- In general sage-grouse habitat, prioritize suppression where wildfires threaten priority sage-grouse habitat.
- Follow Best Management Practices (WO IM 2011-138, see appendix E.)

#### **Emergency Stabilization and Rehabilitation (ES&R)**

- Prioritize native seed allocation for use in sage-grouse habitat in years when preferred native seed is in short supply. This may require reallocation of native seed from ES&R projects outside of priority sage-grouse habitat to those inside it. Use of native plant seeds for ES&R seedings is required based on availability, adaptation (site potential), and probability of success (Richards et al. 1998). Where probability of success or native seed availability is low, non-native seeds may be used as long as they meet sage-grouse habitat conservation objectives (Pyke 2011). Re-establishment of appropriate sagebrush species/subspecies and important understory plants, relative to site potential, shall be the highest priority for rehabilitation efforts.
- Design post ES&R management to ensure long term persistence of seeded or pre-burn native plants. This may require temporary or long-term changes in livestock grazing, wild horse and burro, and travel management, etc., to achieve and maintain the desired condition of ES&R projects to benefit sage-grouse (Eiswerth and Shonkwiler 2006).
- Consider potential changes in climate (Miller et al. 2011) when proposing post-fire seedings using native plants. Consider seed collections from the warmer component within a species' current range for selection of native seed. (Kramer and Havens 2009).

#### **Habitat Restoration**

Habitat restoration cross-cuts all programs. It is an important tool to create and/or maintain a landscape that benefits sage-grouse.



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- Prioritize implementation of restoration projects based on environmental variables that improve chances for project success in areas most likely to benefit sage-grouse (Meinke et al. 2009).
  - Prioritize restoration in seasonal habitats that are thought to be limiting sage-grouse distribution and/or abundance.
- Include sage-grouse habitat parameters as defined by Connelly et al. (2000), Hagen et al. (2007) or if available, State Sage-Grouse Conservation plans and appropriate local information in habitat restoration objectives. Make meeting these objectives within priority sage-grouse habitat areas the highest restoration priority.
- Require use of native seeds for restoration based on availability, adaptation (ecological site potential), and probability of success (Richards et al. 1998). Where probability of success or adapted seed availability is low, non-native seeds may be used as long as they support sage-grouse habitat objectives (Pyke 2011).
- Design post restoration management to ensure long term persistence. This could include changes in livestock grazing management, wild horse and burro management and travel management, etc., to achieve and maintain the desired condition of the restoration effort that benefits sage-grouse (Eiswerth and Shonkwiler 2006).
- Consider potential changes in climate (Miller et al. 2011) when proposing restoration seedings when using native plants. Consider collection from the warmer component of the species current range when selecting native species (Kramer and Havens 2009).
- Restore native (or desirable) plants and create landscape patterns which most benefit sage-grouse.
- Make re-establishment of sagebrush cover and desirable understory plants (relative to ecological site potential) the highest priority for restoration efforts.
- In fire prone areas where sagebrush seed is required for sage-grouse habitat restoration, consider establishing seed harvest areas that are managed for seed production (Armstrong 2007) and are a priority for protection from outside disturbances.

### Monitoring of Sage-grouse and Sagebrush Habitats

Given the degree of uncertainty associated with managing natural resources, adaptive management approaches that include rigorous monitoring protocols to support them are essential if conservation goals are to be realized (Walters 1986, Burgman et al. 2005, Stankey et al. 2005, Turner 2005, Lyons et al. 2008). Recent efforts to develop range-wide policy and conservation measures for sage-grouse have emphasized the importance of improving monitoring efforts on both sage-grouse distribution and population trends, and the habitat they depend on (Wambolt et al. 2002, Stiver et al. 2006, Reese and Boyer 2007, Connelly et al. 2011a).

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Monitoring is necessary to provide an objective appraisal of the effects of potentially positive conservation actions, and to assess the relative negative effects of management actions to sage-grouse populations and their habitats. Adaptive management planning also reveals substantial gaps in knowledge about key processes and functional relationships (Walters 1987), and therefore helps to identify and prioritize research needs. Ideally, monitoring attributes of sage-grouse habitat and sage-grouse populations will allow linking real or potential habitat changes from natural events and management actions to vital rates of sage-grouse populations (Stiver et al. 2006, Naugle and Walker 2007). Population monitoring led by State wildlife agencies and consistent long-term habitat monitoring among all jurisdictions will enable managers to identify indicators associated with population change across large landscapes and to ameliorate negative effects with appropriate conservation actions (Burgman et al. 2005, Turner 2005).

Sage-grouse select habitats at multiple scales across large landscapes (Connelly et al. 2003, Stiver et al. 2006), which monitoring strategies for sage-grouse habitats must reflect. At landscape levels (RMP level), monitoring should track percent of sagebrush and cover and maturity of stands, preservation of key seasonal habitat components, and the degree of connectivity among populations, seasonal habitats and stands. At the project level, a truly effective monitoring strategy will include measures as to how plant communities respond, how that relates to structural and other sage-grouse habitat requirements, and how sage-grouse populations respond demographically. Quantitative data for habitat measurements should be collected that are sensitive to the land use change being proposed (Stiver et al. 2006). Monitoring must occur over the proper time frames to evaluate temporal variation of important components of sage-grouse habitats (Stiver et al. 2006).

Recognizing the importance of monitoring both sage-grouse habitat and populations, BLM in November 2004, completed the National Sage-Grouse Habitat Conservation Strategy (USDI BLM 2004) to address conservation and management of sage-grouse. The overarching goal was to “provide a consistent and scientifically based approach for collection and use of monitoring data for sagebrush habitats, sage-grouse and other components of the sagebrush community.” Four action items were identified to accomplish this goal: 1) Develop, cooperatively with our partners, appropriate monitoring strategies and protocols at the appropriate scale for sage-grouse habitat in conjunction with the development of the range-wide conservation action plan; 2) Develop, cooperatively with our partners, a sage-grouse habitat assessment methodology in conjunction with development of the range-wide conservation action plan; 3) Incorporate the sage-grouse habitat assessment framework into the land health assessment process for evaluating indicators of healthy rangelands; and 4) In conjunction with the development of the range-wide conservation action plan, issue guidance for collecting fine-scale monitoring and assessment information and incorporating requirements into implementation projects and plans.

To date, BLM has completed portions of the above action items. In August 2010, the Sage-Grouse Habitat Assessment Framework: Multi-scale Habitat Assessment Tool was completed (Stiver et al. 2010). The assessment framework provides policy makers, resource managers, and natural resource specialists a comprehensive framework for landscape conservation in sagebrush ecosystems with an emphasis on sage-grouse. Implementation policy directing consistent use of the assessment still needs to be completed by BLM in addition to other guidance identified in the strategy.



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BLM has recently completed the agency's Assessment, Inventory, and Monitoring (AIM) Strategy (Toevs 2011). The AIM strategy identifies "core indicators" for reporting landscape level attributes. The AIM strategy has resulted in BLM adopting the Natural Resource Conservation Service's National Resource Inventory (NRI) methodology as part of BLM's Landscape Monitoring Project. The NRI protocols provide BLM a statistical framework for evaluating management actions, and programs and policies at a landscape or regional level. Initial NRI data collection occurred on all lands managed by BLM during the summer of 2011. During the summer of 2012 additional NRI monitoring sites are being incorporated to evaluate sagebrush habitats that contain approximately two-thirds of the sage-grouse populations west wide. At this time, the remaining sage-grouse populations have not been identified for long-term habitat monitoring due to funding short falls. In addition to prioritizing funding to fully achieve this objective, habitat monitoring protocols at a fine scale to evaluate impacts at a project level remain to be developed.

Estimates of sage-grouse population size are not available for any population, rather trends in population size are estimated through a lek count index. Exact estimates of sage grouse abundance, while desirable, are probably less important than trends and particularly how sage grouse respond to management actions.

Counts of males attending leks in the spring have been used by wildlife agencies as the primary index to population trends since Patterson suggested that this method might be useful in 1952 (Patterson 1952). Use of convenience sampling to monitor bird populations has been criticized (Ellingson and Lukacs 2003), and lek counts in particular have been challenged as inconsistently conducted, inherently biased and without any known relationship to population size (Beck and Braun 1980, Walsh et al. 2004, Sedinger 2007). Despite limitations of the method, lek counts remain the best available information on population trends over time, and pragmatic strategies to improve population estimation remain elusive (Reese and Bowyer 2007).

It is beyond the scope of this report to develop methodology to better estimate sage-grouse distribution and abundance, but rather to emphasize that WAFWA should convene a technical group for this purpose, and that this group should consider ways to:

1. Standardize, at least within management zones, lek count methodology.
2. Develop and implement methodology to estimate the number of leks in an unbiased manner (Walsh et al. 2004, Sedinger 2007), and determine the location of new or previously unknown leks (particularly important since priority habitat designations are based in large part on locations of leks).
3. Develop and implement methodology to estimate the proportion of males detected while attending leks, and explore degree and nature of variability.
4. Develop and explore methodology to estimate sex ratios within sage-grouse populations.
5. Use Geographic Information System (GIS) mapping technology and analytical tools to track changes in distribution over time, connectivity among populations and population segments, and explore spatially explicit models that link sage-grouse population performance with ecological indicators (Naugle and Walker 2007).

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The standardization of monitoring methods and implementation of a defensible monitoring approach is vital if BLM and other conservation partners are to use the resulting information to guide implementation of conservation activities (Naugle and Walker 2007). Monitoring strategies for sage-grouse habitat and populations must be collaborative, as habitat occurs across varied land ownership (52% BLM, 8% USFS, 31% private 5% state, 4% BIA and other Federal; 75 FR 13910), and state fish and wildlife agencies have primary responsibility for population level management of wildlife, including monitoring.



Acronyms  
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## Acronyms

AML	Appropriate Management Level
AMP	Allotment Management Plan
APD	Application of Permit to Drill
BLM	Bureau of Land Management
BMPs	Best Management Practices
CX	Categorical Exclusion
ERMA	Extensive Recreation Management Areas
ESA	Endangered Species Act
ESD	Ecological Site Description
ES&R	Emergency Stabilization and Rehabilitation
IM	Instruction Memorandum
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NGO	non-governmental organization
NMAC	National Multi-Agency Coordination Group
NRCS	Natural Resources Conservation Service
NPT	National Policy Team
NTT	National Technical Team
RIDT	Regional Interdisciplinary Team
RMP	Resource Management Plan
RMT	Regional Management Team
ROW	Right-of-Way
SRMA	Special Recreation Management Area
SRP	Special Recreation Permit
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
WAFWA	Western Association of Fish and Wildlife Agencies

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## Glossary

**2008 WAFWA Sage-grouse MOU:** A memorandum of understanding (MOU) among Western Association of Fish and Wildlife Agencies, U.S. Department of Agriculture, Forest Service, U.S. Department of the Interior, Bureau of Land Management, U.S. Department of the Interior, Fish and Wildlife Service, U.S. Department of the Interior, Geological Survey, U.S. Department of Agriculture, Natural Resources Conservation Service, and the U.S. Department of Agriculture, Farm Service Agency. The purpose of the MOU is to provide for cooperation among the participating state and federal land, wildlife management and science agencies in the conservation and management of sage-grouse (*Centrocercus urophasianus*) sagebrush (*Artemisia* spp.) habitats and other sagebrush-dependent wildlife throughout the western United States and Canada and a commitment of all agencies to implement the 2006 WAFWA Conservation Strategy.

**2011 Partnership MOU:** A partnership agreement among the United States Department of Agriculture Natural Resource Conservation Service, Forest Service, United State Department of the Interior, Bureau of Land Management, and Fish and Wildlife Service. 2011. This MOU is for range management – to implement NRCS practices on adjacent federal properties.

**Administrative Access:** A term used to describe access for resource management and administrative purposes such as fire suppression, cadastral surveys, permit compliance, law enforcement and military in the performance of their official duty, or other access needed to administer BLM-managed lands or uses.

**Avoidance Areas:** Areas to be avoided but that may be available for location of ROWs with special stipulations.

**Best Management Practices (BMPs):** A suite of techniques that guide or may be applied to management actions to aide in achieving desired outcomes. BMPs are often developed in conjunction with land use plans, but they are not considered a planning decision unless the plans specify that they are mandatory.

**Casual Use:** Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. For examples for rights of ways see 43 CFR 2801.5. For examples for locatable minerals see 43 CFR 3809.5.

**Conservation Plan:** The recorded decisions of a landowner or operator, cooperating with a conservation district, on how the landowner or operator plans, within practical limits, to use his/her land according to its capability and to treat it according to its needs for maintenance or improvement of the soil, water, animal, plant, and air resources.

**Conserve:** To cause no degradation or loss of sage-grouse habitat. Conserve can also refer to maintaining intact sagebrush steppe by fine tuning livestock use, watching for and treating new invasive species and maintaining existing range improvements that benefit sage-grouse etc.

**Ecological Site:** A distinctive kind of land with specific physical characteristics that differs from other kinds of land in its ability to produce a distinctive kind and amount of vegetation.



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**Exploration:** Active drilling and geophysical operations to:

- a. Determine the presence of the mineral resource; or
- b. Determine the extent of the reservoir.

**Development:** Active drilling and production of wells

**Development Area:** Areas primarily leased with active drilling and wells capable of production in payable quantities.

**Enhance:** The improvement of habitat by increasing missing or modifying unsatisfactory components and/or attributes of the plant community to meet sage-grouse objectives. Examples include modifying livestock grazing systems to improve the quantity and vigor of desirable forbs, improving water flow in riparian areas by modifying existing spring developments to return more water to the riparian area below the development, or marking fences to minimize sage-grouse hits and mortality.

**General Sage-grouse Habitat:** Is occupied (seasonal or year-round) habitat outside of priority habitat. These areas have been identified by state fish and wildlife agencies in coordination with respective BLM offices.

**Integrated Ranch Planning:** A method for ranch planning that takes a holistic look at all elements of the ranching operations, including strategic and tactical planning, rather than approaching planning as several separate enterprises.

**Large Scale Anthropogenic Disturbances:** Features include but are not limited to paved highways, graded gravel roads, transmission lines, substations, wind turbines, oil and gas wells, geothermal wells and associated facilities, pipelines, landfills, agricultural conversion, homes, and mines.

**Late Brood Rearing Area:** Habitat includes mesic sagebrush and mixed shrub communities, wet meadows, and riparian habitats as well as some agricultural lands (e.g. alfalfa fields, etc).

**Lek:**<sup>vi</sup> A traditional courtship display area attended by male sage-grouse in or adjacent to sagebrush dominated habitat. A lek is designated based on observations of two or more male sage-grouse engaged in courtship displays. Sub-dominant males may display on itinerant strutting areas during population peaks. Such areas usually fail to become established leks. Therefore, a site where less than five males are observed strutting should be confirmed active for two years before meeting the definition of a lek (Connelly et al 2000, Connelly et al. 2003, 2004).

**Lek Complex:** A lek or group of leks within 2.5 km (1.5 mi) of each other between which male sage-grouse may interchange from one day to the next. Fidelity to leks has been well documented.

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<sup>vi</sup> Each State may have a slightly different definition of lek, active lek, inactive lek, occupied, and unoccupied leks. Regional planning will use the appropriate definition provided by the State of interest.

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Visits to multiple leks are most common among yearlings and less frequent for adult males, suggesting an age-related period of establishment (Connelly et al. 2004).

**Active Lek:** Any lek that has been attended by male sage-grouse during the strutting season.

**Inactive Lek:** Any lek where sufficient data suggests that there was no strutting activity throughout a strutting season. Absence of strutting grouse during a single visit is insufficient documentation to establish that a lek is inactive. This designation requires documentation of either: 1) an absence of sage-grouse on the lek during at least 2 ground surveys separated by at least seven days. These surveys must be conducted under ideal conditions (April 1-May 7 (or other appropriate date based on local conditions), no precipitation, light or no wind, half-hour before sunrise to one hour after sunrise) or 2) a ground check of the exact known lek site late in the strutting season (after April 15) that fails to find any sign (tracks, droppings, feathers) of strutting activity. Data collected by aerial surveys should not be used to designate inactive status as the aerial survey may actually disrupt activities.

**Occupied Lek:** A lek that has been active during at least one strutting season within the prior 10 years.

**Unoccupied Lek:** A lek that has either been “destroyed” or “abandoned.”

**Destroyed Lek:** A formerly active lek site and surrounding sagebrush habitat that has been destroyed and is no longer suitable for sage-grouse breeding.

**Abandoned Lek:** A lek in otherwise suitable habitat that has not been active during a period of 10 consecutive years. To be designated abandoned, a lek must be “inactive” (see above criteria) in at least four non-consecutive strutting seasons spanning the 10 years. The site of an “abandoned” lek should be surveyed at least once every 10 years to determine whether it has been re-occupied by sage-grouse.

**Master Development Plans:** A set of information common to multiple planned wells, including drilling plans, Surface Use Plans of Operations, and plans for future production.

**Mitigation:** Compensating for resource impacts by replacing or providing substitute resources or habitat.

**Notice-level Mining Activities:** To qualify for a Notice the mining activity must: 1) constitute exploration, 2) not involve bulk sampling of more than 1,000 tons of presumed ore, 3) must not exceed 5 acres of surface disturbance, and 4) must not occur in one of the special category lands listed in 43 CFR 3809.11(c). The Notice is to be filed in the BLM field office with jurisdiction over the land involved. The Notice does not need to be on a particular form but must contain the information required by 43 CFR 3809.301(b).



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**Offsite Mitigation:** Compensating for resource impacts by replacing or providing substitute resources or habitat at a different location than the project area.

**Plan of Operations:** A Plan of Operations is required for all mining activity exploration greater than 5 acres or surface disturbance greater than casual use on certain special category lands. Special category lands are described under 43 CFR 3809.11(c) and include such lands as designated Areas of Critical Environmental Concern, lands within the National Wilderness Preservation System, and areas closed to off-road vehicles, among others. In addition, a plan of operations is required for activity greater than casual use on lands patented under the Stock Raising Homestead Act with Federal minerals where the operator does not have the written consent of the surface owner (43 CFR 3814). The Plan of operations needs to be filed in the BLM field office with jurisdiction over the land involved. The Plan of Operations does not need to be on a particular form but must address the information required by 43 CFR 3809.401(b).

**Priority Sage-grouse Habitat:** Areas that have been identified as having the highest conservation value to maintaining sustainable sage-grouse populations. These areas would include breeding, late brood-rearing, and winter concentration areas. These areas have been identified by state fish and wildlife agencies in coordination with respective BLM offices.

**Range Improvement:** The term range improvement means any activity, structure or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

**Roads, Primitive Roads and Trails:** Roads, primitive roads or trails that have been specifically designated for motorized use through a public implementation-level National Environmental Policy Act process in accordance with 43 CFR, Part 8340.

**Reclamation:** Rehabilitation of a disturbed area to make it acceptable for designated uses. This normally involves re-contouring, replacement of topsoil, re-vegetation, and other work necessary to ensure eventual restoration of the site.

**Reference State:** The reference state is the state where the functional capacities represented by soil/site stability, hydrologic function, and biotic integrity are performing at an optimum level under the natural disturbance regime. This state usually includes, but is not limited to, what is often referred to as the potential natural plant community.

**Restoration:** Implementation of a set of actions that promotes plant community diversity and structure that allows plant communities to be more resilient to disturbance and invasive species over the long term. The long-term goal is to create functional, high quality habitat that is occupied by sage-grouse. Short-term goal may be to restore the landform, soils and hydrology and increase the percentage of preferred vegetation, seeding of desired species, or treatment of undesired species.

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**State:** A state is comprised of an integrated soil and vegetation unit having one or more biological communities that occur on a particular ecological site and that are functionally similar with respect to the three attributes (soil/site stability, hydrologic function, and biotic integrity) under natural disturbance regimes.

**Stochastic:** Randomly determined event, chance event, a condition determined by predictable processes and a random element.

**Surface Disruption:** Resource uses and activities that are likely to alter the behavior of, displace, or cause stress to sage-grouse occurring at a specific location and/or time. Surface disruption includes those actions that alter behavior or cause the displacement of sage-grouse such that reproductive success is negatively affected, or the physiological ability to cope with environmental stress is compromised. Examples of disruptive activities may include noise, vehicle traffic, or other human presence regardless of the associated activity.

**Surface Disturbance:** Suitable habitat is considered disturbed when it is removed and unavailable for immediate sage-grouse use.

- a. Long-term removal occurs when habitat is physically removed through activities that replace suitable habitat with long term occupancy of unsuitable habitat such as a road, powerline, well pad or active mine. Long-term removal may also result from any activities that cause soil mixing, soil removal, and exposure of the soil to erosive processes.
- b. Short-term removal occurs when vegetation is removed in small areas, but restored to suitable habitat within a few years (< 5) of disturbance, such as a successfully reclaimed pipeline, or successfully reclaimed drill hole or pit.
- c. Suitable habitat rendered unusable due to numerous anthropogenic disturbances
- d. Anthropogenic surface disturbance are surface disturbances meeting the above definitions which result from human activities.

**Transition:** A shift between two states. Transitions are not reversible by simply altering the intensity or direction of factors that produced the change. Instead, they require new inputs such as revegetation or shrub removal. Practices, such as these, that accelerate succession are often expensive to apply.

**Unitization:** Operation of multiple leases as a single lease under a single operator

**Wildcat Well:** An exploratory oil well drilled in land not known to be an oil field.

**Wildland Fire:** Any non-structure fire that occurs in the vegetation and/or natural fuels. Includes both prescribed fire and wildfire (NWCG Memo #024-2010 April 30, 2010. [www.nwcg.gov](http://www.nwcg.gov)).

**Winter Concentration Areas:** Sage-grouse winter habitats which are occupied annually by sage-grouse and provide sufficient sagebrush cover and food to support birds throughout the entire winter (especially periods with above average snow cover). Many of these areas support several different breeding



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populations of sage-grouse. Sage-grouse typically show high fidelity for these areas, and loss or fragmentation can result in significant population impacts.

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Appendix A.  
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## Appendices

### Appendix A. Life History Requirements of Greater Sage-grouse (excerpted from 75 FR 13910)

Greater sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle, and are considered obligate users of several species of sagebrush (e.g., *Artemisia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *A. t.* ssp. *vaseyana* (mountain big sagebrush), and *A. t. tridentata* (basin big sagebrush)) (Patterson 1952, Braun et al. 1976, Connelly et al. 2000a, Connelly et al. 2004, Miller et al. 2011). Greater sage-grouse also use other sagebrush species such as *A. arbuscula* (low sagebrush), *A. nova* (black sagebrush), *A. frigida* (fringed sagebrush), and *A. cana* silver sagebrush (Schroeder et al. 1999, Connelly et al. 2004,). Thus, sage-grouse distribution is strongly correlated with the distribution of sagebrush habitats (Schroeder et al. 2004). Sage-grouse exhibit strong site fidelity (loyalty to a particular area even when the area is no longer of value) to seasonal habitats, which includes breeding, nesting, brood rearing, and wintering areas (Connelly et al. 2004, Connelly et al. 2011b). Adult sage-grouse rarely switch between these habitats once they have been selected, limiting their adaptability to changes.

During the spring breeding season, male sage-grouse gather together to perform courtship displays on areas called leks. The proximity, configuration, and abundance of nesting habitat are key factors influencing lek location (Connelly et al., 1981, and Connelly et al., 2000b, cited in Connelly et al., 2011). Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly et al. 2000a) and, therefore, lek habitat availability is not considered to be a limiting factor for sage-grouse (Schroeder et al. 1999). Nest sites are selected independent of lek locations, but the reverse is not true (Bradbury et al. 1989, Wakkinen et al. 1992). Thus, leks are indicative of nesting habitat.

Females have been documented to travel more than 20 km (12.5 mi) to their nest site after mating (Connelly et al. 2000a), but distances between a nest site and the lek on which breeding occurred is variable (Connelly et al. 2004, Connelly et al. 2011b). Average distance between a female's nest and the lek on which she was first observed ranged from 3.4 km (2.1 mi) to 7.8 km (4.8 mi) in five studies examining 301 nest locations (Schroeder et al. 1999).

Productive nesting areas are typically characterized by sagebrush with an understory of native grasses and forbs, with horizontal and vertical structural diversity that provides an insect prey base, herbaceous forage for pre-laying and nesting hens, and cover for the hen while she is incubating (Gregg 1991, Schroeder et al. 1999, Connelly et al. 2000a, Connelly et al. 2004, Connelly et al. 2011b). Sage-grouse also may use other shrub or bunchgrass species for nest sites (Klebenow 1969, Connelly et al. 2000a, Connelly et al. 2004). Shrub canopy and grass cover provide concealment for sage-grouse nests and young, and are critical for reproductive success (Barnett and Crawford 1994, Gregg et al. 1994, DeLong et al. 1995, Connelly et al. 2004).



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Hens rear their broods in the vicinity of the nest site for the first 2-3 weeks following hatching (within 0.2-5 km (0.1-3.1 mi)), based on two studies in Wyoming (Connelly et al. 2004). Forbs and insects are essential nutritional components for chicks (Klebenow and Gray 1968, Johnson and Boyce 1991, Connelly et al. 2004). Therefore, early brood-rearing habitat must provide adequate cover (sagebrush canopy cover of 10 to 25 percent; Connelly et al. 2000a) adjacent to areas rich in forbs and insects to ensure chick survival during this period (Connelly et al. 2004, Hagen et al. 2007).

All sage-grouse gradually move from sagebrush uplands to more mesic areas (moist areas such as streambeds or wet meadows) during the late brood-rearing period (3 weeks post-hatch) in response to summer desiccation of herbaceous vegetation (Connelly et al. 2000a). Summer use areas can include sagebrush habitats as well as riparian areas, wet meadows and alfalfa fields (Schroeder et al. 1999). These areas provide an abundance of forbs and insects for both hens and chicks (Schroeder et al. 1999, Connelly et al. 2000a).

As vegetation continues to desiccate through the late summer and fall, sage-grouse shift their diet entirely to sagebrush (Schroeder et al. 1999). Sage-grouse depend entirely on sagebrush throughout the winter for both food and cover (Connelly et al. 2011a). Sagebrush stand selection is influenced by snow depth (Patterson 1952, Hupp and Braun 1989), availability of sagebrush above the snow to provide cover (Connelly et al. 2004, and references therein) and, in some areas, topography (e.g., elevation, slope and aspect, Beck 1977, Crawford et al. 2004).

Many populations of sage-grouse migrate between seasonal ranges in response to habitat distribution (Connelly et al. 2004). Migration can occur between winter and breeding and summer areas, between breeding, summer and winter areas, or not at all. Migration distances of up to 161 km (100 mi) have been recorded (Patterson 1952), however, distances vary depending on the locations of seasonal habitats (Schroeder et al. 1999). Migration distances for female sage-grouse generally are less than for males (Connelly et al. 2004), but in one study in Colorado, females travelled further than males (Beck 1977). Almost no information is available regarding the distribution and characteristics of migration corridors for sage-grouse (Connelly et al. 2004). Sage-grouse dispersal (permanent moves to other areas) is poorly understood (Connelly et al. 2004, Knick and Hanser 2011) and appears to be sporadic (Dunn and Braun 1986). Estimating an "average" home range for sage-grouse is difficult due to the large variation in sage-grouse movements both within and among populations. This variation is related to the spatial availability of habitats required for seasonal use and annual recorded home ranges have varied from 4 to 615 square kilometers (km<sup>2</sup>) (1.5 to 237.5 square miles (mi<sup>2</sup>)), Connelly et al. 2011b).

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Appendix B.  
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## Appendix B. Scientific Inference

When making natural resource management decisions, managers desire a high level of certainty that their management actions will have the anticipated outcome (Ratti and Garton 1994, Garton et al. 2005). Unfortunately, natural systems have inherent complexity and stochasticity that make certainty in wildlife management decisions challenging (Williams et al. 2002). In an effort to ameliorate some of this uncertainty, managers use quality, published scientific investigations which are reliant upon thoughtful research design (Ratti and Garton 1994, Garton et al. 2005) to guide population and habitat management decisions. When relevant peer reviewed literature does not exist, managers have to resort to best professional judgment and/or unpublished studies. In addition, when using published and unpublished literature, managers must also be cognizant of the research findings for certainty of the conclusions, the scientific method, and if the findings can be applied from the data and results (Murphy and Noon 1991).

Most wildlife research is located along a continuum of field studies (Ratti and Garton 1994, Garton et al. 2005; Fig. 1) and provides varying degrees of reliable knowledge (Romesburg 1981, Hurlbert, 1984, Eberhardt and Thomas 1991). The more rigorous the research design, results, and conclusions, the more confident managers can be in the anticipated outcome (Ratti and Garton 1994, Garton et al. 2005). Research that bases its results and interpretation on an integrated research process includes field level experiments, field study, and modeling (Fig. 1). If designed appropriately, these research efforts can provide for a more broad-based application of research results as opposed to descriptive natural history studies (Ratti and Garton 1994, Garton et al. 2005) (Fig. 1).

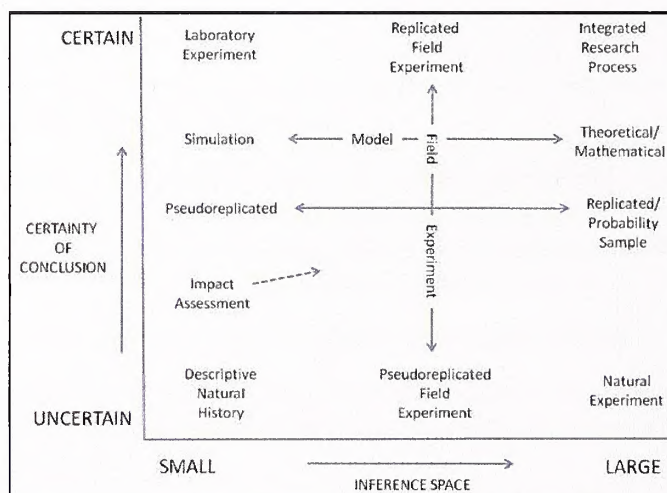


Figure 1. The spectrum of types of wildlife studies that can produce results and conclusions with a large amount of certainty over a very large area of applicability (adapted from Ratti and Garton 1994 and Garton et al. 2005).

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Because sage-grouse research has been on-going for over 60 years, managers have access to published literature from several studies (metareplication (Johnson 2002)) that includes different years, study areas, methods, and investigators (Johnson 2002) which leads to more certainty in conclusions (for example see Hagen et al. 2007). In contrast, for some management actions, access to published and unpublished literature may be limited to a single descriptive study. A single descriptive study and/or professional judgment has the lowest level of certainty and lowest inference space. Unfortunately, it may be the only information available on the subject. Ultimately, the result is succinctly summarized by Anderson et al. (2001:312) who stated, "In the long run, science is safeguarded by repeated studies to ascertain what is real and what is merely a spurious result from a single study."

Management in sagebrush ecosystems is further complicated by new forms of development or the unprecedented pace at which traditional uses are increasing. Wind and other renewable energy sources are being proposed and developed in areas that previously had undergone little development. The applicability of results from previous research in other regions on oil and gas development to these new forms of land use is unknown, but is the best information currently available. We also do not know how sagebrush and sage-grouse respond to the increasing intensity of all uses ranging from traditional commodity development to nonconsumptive activities, such as recreation and OHV travel that is occurring across their range. Although previous research can guide management decisions, the changes due to the cumulative effect of this new level of increased development may take years to be fully expressed in habitat and population response.

No single research study, or even a series of studies, regardless of design, and/or inference extent can provide complete certainty in their conclusion(s). As a result, managers must be vigilant in their judgment of research study design, its inference space, and applicability to their management issue when making management decisions. This report cites a large number of published and unpublished studies that can be placed along the continuum of certainty of conclusion and inference space (Fig. 1). Many of the studies cited are from different researchers, study sites, methodologies, and/or years which assists and improves the certainty of the conclusion and inference space (Fig. 1), but ultimately, it is incumbent upon managers to assess their level of risk (consequences of being wrong) with management decisions based upon the cited findings.



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The large spatial scales occupied by sage-grouse seasonally (as much as 1,700 mi<sup>2</sup>; Leonard et al. 2000) have made research on how they respond to habitat perturbations difficult to conduct. Although strength of inference is strongest for replicated experiments, studies of this nature have not been conducted on large scale perturbations such as oil and gas developments, wind farms, coal mines, powerlines, etc. We therefore relied on retrospective and correlational studies that looked at changes in sage-grouse distribution, abundance or demographic rates over time following these developments. We gave greater credence to conclusions obtained from multiple studies conducted at different locations at different times that showed similar results.

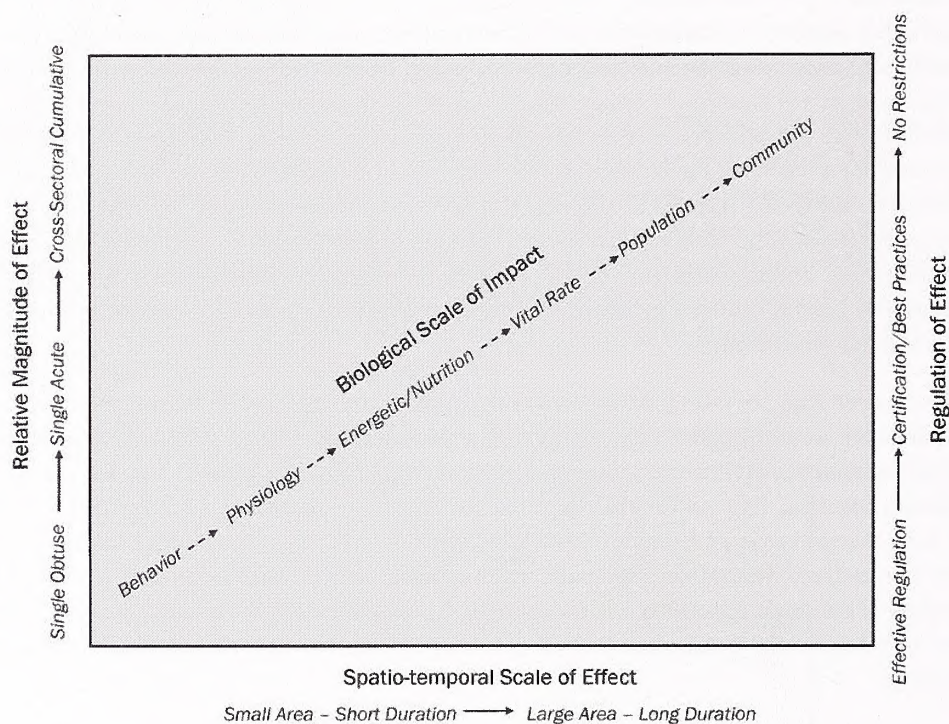


Figure 2. Schematic representation of a typology for classifying and predicting the impacts of human-wildlife interactions (as modified from Johnson and St-Laurent 2011).

Conservation measures described in this report are derived from interpretation of the best available scientific studies using our best professional judgment. Because there is a degree of uncertainty about the

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effectiveness of these conservation measures, we recommend a rigorous adaptive management process be employed, with population and habitat monitoring as well as feedback loops so that conservation measures or policies that are ineffective can be changed (Lyons et al. 2008).

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**Appendix C. BMPs for how to make a pond that won't produce mosquitoes that transmit West Nile virus (from Doherty (2007)).**

The following are seven distinct site modifications that if adhered to, would minimize exploitation of CBNG ponds by *Culex tarsalis*:

1. Increase the size of ponds to accommodate a greater volume of water than is discharged. This will result in un-vegetated and muddy shorelines that breeding *Cx. tarsalis* avoid (De Szalay and Resh 2000). This modification may reduce *Cx. tarsalis* habitat but could create larval habitat for *Culicoides sonorensis*, a vector of blue tongue disease, and should be used sparingly (Schmidtman et al. 2000). Steep shorelines should be used in combination with this technique whenever possible (Knight et al. 2003).
2. Build steep shorelines to reduce shallow water (>60 cm) and aquatic vegetation around the perimeter of impoundments (Knight et al. 2003). Construction of steep shorelines also will create more permanent ponds that are a deterrent to colonizing mosquito species like *Cx. tarsalis* which prefer newly flooded sites with high primary productivity (Knight et al. 2003).
3. Maintain the water level below that of rooted vegetation for a muddy shoreline that is unfavorable habitat for mosquito larvae. Rooted vegetation includes both aquatic and upland vegetative types. Avoid flooding terrestrial vegetation in flat terrain or low lying areas. Aquatic habitats with a vegetated inflow and outflow separated by open water produce 5-10 fold fewer *Culex* mosquitoes than completely vegetated wetlands (Walton and Workman 1998). Wetlands with open water also had significantly fewer stage III and IV instars which may be attributed to increased predator abundances in open water habitats (Walton and Workman 1998).
4. Construct dams or impoundments that restrict down slope seepage or overflow by digging ponds in flat areas rather than damming natural draws for effluent water storage, or lining constructed ponds in areas where seepage is anticipated (Knight et al. 2003).
5. Line the channel where discharge water flows into the pond with crushed rock, or use a horizontal pipe to discharge inflow directly into existing open water, thus precluding shallow surface inflow and accumulation of sediment that promotes aquatic vegetation.
6. Line the overflow spillway with crushed rock, and construct the spillway with steep sides to preclude the accumulation of shallow water and vegetation.
7. Fence pond site to restrict access by livestock and other wild ungulates that trample and disturb shorelines, enrich sediments with manure and create hoof print pockets of water that are attractive to breeding mosquitoes.



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Appendix D.  
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## Appendix D. Best Management Practices for Fluid Mineral Development

Priority Habitats - BMPs are continuously improving as new science and technology become available and therefore are subject to change. Include from the following BMPs those that are appropriate to mitigate effects from the approved action.

### Roads

- Design roads to an appropriate standard no higher than necessary to accommodate their intended purpose.
- Locate roads to avoid important areas and habitats.
- Coordinate road construction and use among ROW holders.
- Construct road crossing at right angles to ephemeral drainages and stream crossings.
- Establish speed limits on BLM system roads to reduce vehicle/wildlife collisions or design roads to be driven at slower speeds.
- Establish trip restrictions (Lyon and Anderson 2003) or minimization through use of telemetry and remote well control (e.g., Supervisory Control and Data Acquisition).
- Do not issue ROWs to counties on newly constructed energy development roads, unless for a temporary use consistent with all other terms and conditions included in this document.
- Restrict vehicle traffic to only authorized users on newly constructed routes (use signing, gates, etc.)
- Use dust abatement practices on roads and pads.
- Close and rehabilitate duplicate roads.

### Operations

- Cluster disturbances, operations (fracture stimulation, liquids gathering, etc.), and facilities.
- Use directional and horizontal drilling to reduce surface disturbance.
- Place infrastructure in already disturbed locations where the habitat has not been restored.
- Consider using oak (or other material) mats for drilling activities to reduce vegetation disturbance and for roads between closely spaced wells to reduce soil compaction and maintain soil structure to increase likelihood of vegetation reestablishment following drilling.
- Apply a phased development approach with concurrent reclamation.
- Place liquid gathering facilities outside of priority areas. Have no tanks at well locations within priority areas (minimizes perching and nesting opportunities for ravens and raptors and truck traffic). Pipelines must be under or immediately adjacent to the road (Bui et al. 2010).



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- Restrict the construction of tall facilities and fences to the minimum number and amount needed.
- Site and/or minimize linear ROWs to reduce disturbance to sagebrush habitats.
- Place new utility developments (power lines, pipelines, etc.) and transportation routes in existing utility or transportation corridors.
- Bury distribution power lines.
- Corridor power, flow, and small pipelines under or immediately adjacent to roads.
- Design or site permanent structures which create movement (e.g. a pump jack) to minimize impacts to sage-grouse.
- Cover (e.g., fine mesh netting or use other effective techniques) all drilling and production pits and tanks regardless of size to reduce sage-grouse mortality.
- Equip tanks and other above ground facilities with structures or devices that discourage nesting of raptors and corvids.
- Control the spread and effects of non-native plant species (Evangelista et al. 2011). (E.g. by washing vehicles and equipment.)
- Use only closed-loop systems for drilling operations and no reserve pits.
- Restrict pit and impoundment construction to reduce or eliminate threats from West Nile virus (Doherty 2007).
- Remove or re-inject produced water to reduce habitat for mosquitoes that vector West Nile virus. If surface disposal of produced water continues, use the following steps for reservoir design to limit favorable mosquito habitat:
  - Overbuild size of ponds for muddy and non-vegetated shorelines.
  - Build steep shorelines to decrease vegetation and increase wave actions.
  - Avoid flooding terrestrial vegetation in flat terrain or low lying areas.
  - Construct dams or impoundments that restrict down slope seepage or overflow.
  - Line the channel where discharge water flows into the pond with crushed rock.
  - Construct spillway with steep sides and line it with crushed rock.
  - Treat waters with larvicides to reduce mosquito production where water occurs on the surface.
- Limit noise to less than 10 decibels above ambient measures (20-24 dBA) at sunrise at the perimeter of a lek during active lek season (Patricelli et al. 2010, Blickley et al. *In preparation*).
- Require noise shields when drilling during the lek, nesting, broodrearing, or wintering season.
- Fit transmission towers with anti-perch devices (Lammers and Collopy 2007).

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- Require sage-grouse-safe fences.
- Locate new compressor stations outside priority habitats and design them to reduce noise that may be directed towards priority habitat.
- Clean up refuse (Bui et al. 2011).
- Locate man camps outside of priority habitats.

**Reclamation**

- Include objectives for ensuring habitat restoration to meet sage-grouse habitat needs in reclamation practices/sites (Pyke 2011). . Address post reclamation management in reclamation plan such that goals and objectives are to protect and improve sage-grouse habitat needs.
- Maximize the area of interim reclamation on long-term access roads and well pads including reshaping, topsoiling and revegetating cut and fill slopes.
- Restore disturbed areas at final reclamation to the pre-disturbance landforms and desired plant community.
- Irrigate interim reclamation if necessary for establishing seedlings more quickly.
- Utilize mulching techniques to expedite reclamation and to protect soils.

General sage-grouse habitat

*Best Management Practices*

Make applicable BMPs mandatory as Conditions of Approval within general sage-grouse habitat. BMPs are continuously improving as new science and technology become available and therefore are subject to change. At a minimum include the following BMPs:

**Roads**

- Design roads to an appropriate standard no higher than necessary to accommodate their intended purpose.
- Do not issue ROWs to counties on energy development roads, unless for a temporary use consistent with all other terms and conditions included in this document.
- Establish speed limits to reduce vehicle/wildlife collisions or design roads to be driven at slower speeds.
- Coordinate road construction and use among ROW holders.
- Construct road crossing at right angles to ephemeral drainages and stream crossings.
- Use dust abatement practices on roads and pads.



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- Close and reclaim duplicate roads, by restoring original landform and establishing desired vegetation.

**Operations**

- Cluster disturbances, operations (fracture stimulation, liquids gathering, etc.), and facilities.
- Use directional and horizontal drilling to reduce surface disturbance.
- Clean up refuse (Bui et al. 2010).
- Restrict the construction of tall facilities and fences to the minimum number and amount needed.
- Cover (e.g., fine mesh netting or use other effective techniques) all drilling and production pits and tanks regardless of size to reduce sage-grouse mortality.
- Equip tanks and other above ground facilities with structures or devices that discourage nesting of raptors and corvids.
- Use remote monitoring techniques for production facilities and develop a plan to reduce the frequency of vehicle use.
- Control the spread and effects from non-native plant species. (e.g. by washing vehicles and equipment.)
- Restrict pit and impoundment construction to reduce or eliminate augmenting threats from West Nile virus (Dougherty 2007).

**Reclamation**

- Include restoration objectives to meet sage-grouse habitat needs in reclamation practices/sites (Pyke 2011). Address post reclamation management in reclamation plan such that goals and objectives are to enhance or restore sage-grouse habitat.

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Appendix E  
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## Appendix E. Best Management Practices for Locatable Mineral Development

BMPs are continuously improving as new science and technology become available and therefore are subject to change. Include from the following BMPs those that are appropriate to mitigate effects from the approved action.

### Roads

- Design roads to an appropriate standard no higher than necessary to accommodate their intended purpose.
- Locate roads to avoid important areas and habitats.
- Coordinate road construction and use among ROW holders.
- Construct road crossing at right angles to ephemeral drainages and stream crossings.
- Establish speed limits on BLM system roads to reduce vehicle/wildlife collisions or design roads to be driven at slower speeds.
- Do not issue ROWs to counties on mining development roads, unless for a temporary use consistent with all other terms and conditions included in this document.
- Restrict vehicle traffic to only authorized users on newly constructed routes (e. g., use signing, gates, etc.)
- Use dust abatement practices on roads and pads.
- Close and reclaim duplicate roads, by restoring original landform and establishing desired vegetation.

### Operations

- Cluster disturbances associated with operations and facilities as close as possible.
- Place infrastructure in already disturbed locations where the habitat has not been restored.
- Restrict the construction of tall facilities and fences to the minimum number and amount needed.
- Site and/or minimize linear ROWs to reduce disturbance to sagebrush habitats.
- Place new utility developments (power lines, pipelines, etc.) and transportation routes in existing utility or transportation corridors.
- Bury power lines.
- Cover (e.g., fine mesh netting or use other effective techniques) all pits and tanks regardless of size to reduce sage-grouse mortality.
- Equip tanks and other above ground facilities with structures or devices that discourage nesting of raptors and corvids.

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- Control the spread and effects of non-native plant species (Gelbard and Belnap 2003, Bergquist et al. 2007).
- Restrict pit and impoundment construction to reduce or eliminate threats from West Nile virus (Doherty 2007).
- Remove or re-inject produced water to reduce habitat for mosquitoes that vector West Nile virus. If surface disposal of produced water continues, use the following steps for reservoir design to limit favorable mosquito habitat:
  - Overbuild size of ponds for muddy and non-vegetated shorelines.
  - Build steep shorelines to decrease vegetation and increase wave actions.
  - Avoid flooding terrestrial vegetation in flat terrain or low lying areas.
  - Construct dams or impoundments that restrict down slope seepage or overflow.
  - Line the channel where discharge water flows into the pond with crushed rock.
  - Construct spillway with steep sides and line it with crushed rock.
  - Treat waters with larvicides to reduce mosquito production where water occurs on the surface.
- Require sage-grouse-safe fences around sumps.
- Clean up refuse (Bui et al. 2010).
- Locate man camps outside of priority sage-grouse habitats.

**Reclamation**

- Include restoration objectives to meet sage-grouse habitat needs in reclamation practices/sites. Address post reclamation management in reclamation plan such that goals and objectives are to protect and improve sage-grouse habitat needs.
- Maximize the area of interim reclamation on long-term access roads and well pads including reshaping, topsoiling and revegetating cut and fill slopes.
- Restore disturbed areas at final reclamation to pre-disturbance landform and desired plant community.
- Irrigate interim reclamation as necessary during dry periods.

Utilize mulching techniques to expedite reclamation.

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Appendix F.  
National Technical Team

## **Appendix F. Best Management Practices for Fire & Fuels (wo IM 2011-138)**

### *Fuels Management BMPs:*

1. Where applicable, design fuels treatment objective to protect existing sagebrush ecosystems, modify fire behavior, restore native plants, and create landscape patterns which most benefit sage-grouse habitat.
2. Provide training to fuels treatment personnel on sage-grouse biology, habitat requirements, and identification of areas utilized locally.
3. Use fire prescriptions that minimize undesirable effects on vegetation or soils (e.g., minimize mortality of desirable perennial plant species and reduce risk of hydrophobicity).
4. Ensure proposed sagebrush treatments are planned with interdisciplinary input from BLM and /or state wildlife agency biologist and that treatment acreage is conservative in the context of surrounding sage-grouse seasonal habitats and landscape.
5. Where appropriate, ensure that treatments are configured in a manner (e.g., strips) that promotes use by sage-grouse (See Connelly et al., 2000\*)
6. Where applicable, incorporate roads and natural fuel breaks into fuel break design.
7. Power-wash all vehicles and equipment involved in fuels management activities prior to entering the area to minimize the introduction of undesirable and/or invasive plant species.
8. Design vegetation treatment in areas of high frequency to facilitate firefighting safety, reduce the risk of extreme fire behavior; and to reduce the risk and rate of fire spread to key and restoration habitats.
9. Give priority for implementing specific sage-grouse habitat restoration projects in annual grasslands first to sites which are adjacent to or surrounded by sage-grouse key habitats. Annual grasslands are second priority for restoration when the sites not adjacent to key habitat, but within 2 miles of key habitat. The third priority for annual grasslands habitat restoration projects are sites beyond 2 miles of key habitat. The intent is to focus restoration outward from existing, intact habitat.
10. As funding and logistics permit, restore annual grasslands to a species composition characterized by perennial grasses, forbs, and shrubs.
11. Emphasize the use of native plant species, recognizing that non-native species may be necessary depending on the availability of native seed and prevailing site conditions.
12. Remove standing and encroaching trees within at least 100 meters of occupied sage-grouse leks and other habitats (e.g., nesting, wintering, and brood rearing) to reduce the availability of perch sites for avian predators, as appropriate, and resources permit.



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13. Protect wildland areas from wildfire originating on private lands, infrastructure corridors, and recreational areas.
14. Reduce the risk of vehicle or human-caused wildfires and the spread of invasive species by planting perennial vegetation (e.g., green-strips) paralleling road rights-of-way.
15. Strategically place and maintain pre-treated strips/areas (e.g., mowing, herbicide application, and strictly managed grazed strips) to aid in controlling wildfire should wildfire occur near key habitats or important restoration areas (such as where investments in restoration have already been made).

*Fire Management BMPs:*

1. Develop state-specific sage-grouse toolboxes containing maps, a list of resource advisors, contact information, local guidance, and other relevant information.
2. Provide localized maps to dispatch offices and extended attack incident commanders for use in prioritizing wildfire suppression resources and designing suppression tactics.
3. Assign a sage-grouse resource advisor to all extended attack fires in or near key sage-grouse habitat areas. Prior to the fire season, provide training to sage-grouse resource advisors on wildfire suppression organization, objectives, tactics, and procedures to develop a cadre of qualified individuals.
4. On critical fire weather days, pre-position additional fire suppression resources to optimize a quick and efficient response in sage-grouse habitat areas.
5. During periods of multiple fires, ensure line officers are involved in setting priorities.
6. To the extent possible, locate wildfire suppression facilities (i.e., base camps, spike camps, drop points, staging areas, heli-bases) in areas where physical disturbance to sage-grouse habitat can be minimized. These include disturbed areas, grasslands, near roads/trails or in other areas where there is existing disturbance or minimal sagebrush cover.
7. Power-wash all firefighting vehicles, to the extent possible, including engines, water tenders, personnel vehicles, and ATVs prior to deploying in or near sage-grouse habitat areas to minimize noxious weed spread.
8. Minimize unnecessary cross-country vehicle travel during fire operations in sage-grouse habitat.
9. Minimize burnout operations in key sage-grouse habitat areas by constructing direct fireline whenever safe and practical to do so.
10. Utilize retardant and mechanized equipment to minimize burned acreage during initial attack.
11. As safety allows, conduct mop-up where the black adjoins unburned islands, dog legs, or other habitat features to minimize sagebrush loss.

Appendix F.  
National Technical Team

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## Appendix G. National Technical Team Members

Appendix C.  
National Technical Team**Literature Cited:**

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**K.4 Instruction Memorandum 2012-043: Greater Sage-Grouse Interim Management Policies and Procedures**



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D. C. 20240  
<http://www.blm.gov/>  
December 22, 2011

In Reply Refer To:  
1110 (170/200/300/400) P

EMS TRANSMISSION 12/27/2011  
Instruction Memorandum No. 2012-043  
Expires: 09/31/2013

To: All Field Office Officials  
From: Director  
Subject: Greater Sage-Grouse Interim Management Policies and Procedures

**Program Areas:** All Programs.

**Purpose:** This Instruction Memorandum (IM) provides interim conservation policies and procedures to the Bureau of Land Management (BLM) field officials to be applied to ongoing and proposed authorizations and activities that affect the Greater Sage-Grouse (*Centrocercus urophasianus*) and its habitat. This direction ensures that interim conservation policies and procedures are implemented when field offices authorize or carry out activities on public land while the BLM develops and decides how to best incorporate long-term conservation measures for Greater Sage-Grouse into applicable Land Use Plans (LUP). This direction promotes sustainable Greater Sage-Grouse populations and conservation of its habitat while not closing any future options before the planning process can be completed.

This IM supplements the direction for Greater Sage-Grouse contained in Washington Office (WO) IM 2010-071 (*Gunnison and Greater Sage-Grouse Management Considerations for Energy Development*) and is consistent with WO-IM-2011-138 (*Sage-Grouse Conservation Related to Wildland Fire and Fuels Management*). The Gunnison Sage-Grouse, bi-state distinct population segment in California and Nevada, and the Washington State distinct population segment are not covered by this IM and will be addressed through other policies and planning efforts. WO-IM-2010-071 remains applicable to the Gunnison Sage-Grouse.

The 2010 U.S. Fish and Wildlife Service (FWS) findings on petitions to list the Greater Sage-Grouse (petition decision) (75 FR 13910 – 14014; 03/23/2010) identified habitat conversion and fragmentation from wildfire, invasive plants, energy and infrastructure development, urbanization, and agricultural conversion as the primary threats to the species throughout its range. Through this IM, the BLM is providing interim conservation policies and procedures across multiple programs, in order of threat magnitude, while the BLM considers amendments or revisions to LUPs. Maintaining and restoring high quality habitat for the Greater Sage-Grouse is consistent with the BLM multiple-use and sustained-yield management direction of the Federal Land Policy and Management Act.

**Policy/Action:** As summarized in the BLM's National Strategy, emphasis for protecting and managing Greater Sage-Grouse habitat incorporates the following principles:

- 1) Protection of unfragmented habitats;
- 2) Minimization of habitat loss and fragmentation; and
- 3) Management of habitats to maintain, enhance, or restore conditions that meet Greater Sage-Grouse life history needs.

To provide guidance to field offices about how to promote these principles, this IM transmits policies and procedures that apply to ongoing and proposed BLM actions, including use authorizations, within Preliminary Priority Habitat (PPH) and Preliminary General Habitat (PGH). PPH comprises areas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage-Grouse populations. These areas would include breeding, late brood-rearing, and winter concentration areas. These areas have been identified by the BLM in coordination with respective state wildlife agencies. PGH comprises areas of occupied seasonal or year-round habitat outside of priority habitat. These areas have been identified by the BLM in coordination with respective state wildlife agencies.

The policies and procedures identified in this IM are designed to minimize habitat loss in PPH and PGH and will advance the BLM's objectives to maintain or restore habitat to desired conditions by ensuring that field offices analyze and document impacts to PPH and PGH and coordinate with states and the Fish and Wildlife Service when issuing the decisions described below. These policies and procedures are in addition to and do not replace more protective measures in existing LUPs. The direction in this IM is time-limited: for each planning area where Greater Sage-Grouse occur, the conservation policies and procedures described in this IM will be applied until the BLM makes decisions through the land use planning process. All such LUP decisions are expected to be completed by the end of 2014. The BLM field offices do not need to apply the conservation policies and procedures described in this IM in areas in which (1) a state and/or local regulatory mechanism has been developed for the conservation of the Greater Sage-Grouse in coordination and concurrence with the FWS (including the Wyoming Governor's Executive Order 2011-5, Greater Sage-Grouse Core Area Protection); and (2) the state sage-grouse plan has subsequently been adopted by the BLM through the issuance of a state-level BLM IM. If BLM programs are not addressed in the adopted state Greater Sage-Grouse plan then program direction will default to the policies and procedures set forth in this WO IM.

PPH and PGH data and maps have been developed through a collaborative effort between the BLM and the respective state wildlife agencies and are stored at the National Operations Center (NOC). These science-based maps were developed using the best available data and may change as new information becomes available. Such changes would be science-based and coordinated with the state wildlife agencies so that the resulting delineation of PPH and PGH provides for sustainable populations. In those instances where the BLM state offices have not completed this delineation, the Breeding Bird Density maps developed by Doherty 2010[1] will be used. The NOC will establish the process for updating files to include the latest PPH and PGH delineations for each state. This information will assist in applying the interim conservation policies and procedures identified in Sections I and II below. As LUPs are amended or revised, the BLM state offices will be responsible for coordinating with the NOC to use the newest delineation of PPH and PGH. BLM staff may access the PPH and PGH data, using the following link: \\blm\dfs\loc\EGIS\OC\Wildlife\Transfers\GREATER\_SAGE\_GROUSE\_GIS\_DATA. Non-BLM personnel, may access these maps through the respective state wildlife agency.

The BLM will continue to work with its partners including the Western Association of Fish and Wildlife Agencies (WAFWA), FWS, U.S. Geological Survey (USGS), Natural Resource Conservation Service (NRCS), U.S. Forest Service (USFS), and the Farm Services Agency (FSA) within the framework of the Sagebrush Memorandum of Understanding (2008) and the WAFWA *Greater Sage-Grouse Comprehensive Conservation Strategy* (2006).

## I. Interim Conservation Policies and Procedures for "Preliminary Priority Habitat"

Through these policies and procedures, you should seek to maintain, enhance, or restore conditions for Greater Sage-Grouse and its habitat. These policies and procedures apply to PPH only. Separate policies and procedures for PGH are provided in Section II of this IM.



## Integrated Vegetation Management

### Proposed Authorizations/Activities

- Evaluate land treatments (including Greater Sage-Grouse habitat treatments) in a landscape-scale context to address habitat fragmentation, effective patch size, invasive species presence, and protection of intact sagebrush communities. Coordinate land treatments with adjacent land owners to avoid any unintended negative landscape effects to Greater Sage-Grouse.
- When designing vegetation treatments, reference Ecological Site Descriptions (ESD), where available; the BLM *Integrated Vegetation Management Handbook* (H-1740-2); and a white paper developed by the Western Association of Fish and Wildlife Agencies entitled, *Prescribed Fire as a Management Tool in Xeric Sagebrush Ecosystems: Is it Worth the Risk to Sage-Grouse?*
- Coordinate, plan, design, and implement vegetation treatments (e.g., pinyon/juniper removal, fuels treatments, green stripping) and associated effectiveness monitoring between Resources, Fuels Management, Emergency Stabilization, and Burned Area Rehabilitation programs to:
  - Promote the maintenance of large intact sagebrush communities;
  - Limit the expansion or dominance of invasive species, including cheatgrass;
  - Maintain or improve soil site stability, hydrologic function, and biological integrity; and
  - Enhance the native plant community, including the native shrub reference state in the *State and Transition Model*, with appropriate shrub, grass, and forb composition identified in the applicable ESD where available.
- When conducting National Environment Policy Act (NEPA) analysis for vegetation treatments, document your analysis of (1) short- and long-term objectives and (2) direct, indirect, and cumulative effects of treatment types on Greater Sage-Grouse and its habitat.
- Pursue short-term objectives that include maintaining soil stability and hydrologic function of the disturbed site so a resilient plant community can be established.
- Pursue a long-term objective to maintain resilient native plant communities. Choose native plant species outlined in ESDs, where available, to revegetate sites. If the commercial supply of appropriate native seed/plants is limited, work with the BLM Native Plant Materials Development Program (NPMDDP) through your respective State Office Plant Conservation Program Lead. It is a primary objective of the NPMDDP to ensure native plants used by Greater Sage-Grouse are being collected and developed into commercially viable crops. If currently available supplies are limited, use the materials that provide the greatest benefit for Greater Sage-Grouse. When necessary, analyze the use of non-native species that do not impede long-term reestablishment goals of native plant communities and Greater Sage-Grouse habitat.
- Meet vegetation management objectives that have been set for seeding projects prior to returning the area to authorized uses, specifically livestock grazing. This generally takes a minimum of two growing seasons (see Handbook H-1742, *Emergency Fire Rehabilitation Handbook*). When treating invasive species, use the standard operating procedures and best management practices outlined in the *2007 Vegetation Treatments Using Herbicides on BLM Lands in 17 States Environmental Impact Statement* and applicable practices found in its accompanying *Biological Assessment*.
- Where pinyon and juniper trees are encroaching on sagebrush plant communities, design treatments to increase cover of sagebrush and/or understory to (1) improve habitat for Greater Sage-Grouse; and (2) minimize avian predator perches and predation opportunities on Greater Sage-Grouse.
- Implement management actions, where appropriate, to improve degraded Greater Sage-Grouse habitats that have become encroached upon by shrubland or woodland species.
- Identify opportunities for prescribed fire; including where prescribed fire has been identified as the most appropriate tool to meet fuels management objectives and Greater Sage-Grouse conservation objectives, and the potential expansion or dominance of invasive species has been determined to be minimal through an invasive species risk determination for the treatment project (see BLM Manual Section 9015). Before using prescribed fire, field offices must analyze the potential expansion or dominance of invasive species as a result of this treatment.

## Wildfire Emergency Stabilization and Burned Area Rehabilitation

### Both Ongoing and Proposed Authorizations/Activities

- In Emergency Stabilization and Burned Area Rehabilitation plans, prioritize re-vegetation projects to (1) maintain and enhance unburned intact sagebrush habitat when at risk from adjacent threats; (2) stabilize soils; (3) reestablish hydrologic function; (4) maintain and enhance biological integrity; (5) promote plant resiliency; (6) limit expansion or dominance of invasive species; and (7) reestablish native species.
- Increase post-fire activities through the use of integrated funding opportunities with other resource programs and partners.
- In areas burned within the past 5 years, ensure that effectiveness monitoring outlined in post-fire stabilization and rehabilitation plans continues and report the results as outlined in WO-IM-2010-195. Post-fire stabilization and rehabilitation monitoring should continue until post-fire objectives are met.

## Wildfire Suppression and Fuels Management

### Ongoing Authorizations/Activities

- Threatened, endangered, and sensitive species (including sage-grouse) and associated habitats will continue to be a high natural resource priority for National and Geographic Multi-Agency Coordination Groups, whose purpose is to manage and prioritize wildland fire operations on a national and geographic area scope when fire management resource shortages are probable.
- Greater Sage-Grouse protection and habitat enhancement is a high priority for the fire management program. A full range of fire management activities and options will be utilized to sustain healthy ecosystems (including Greater Sage-Grouse habitats) within acceptable risk levels. Local agency administrators and resource advisors will convey protection priorities to incident commanders.
- Comply with the policies established in WO-IM-2011-138 (Sage-Grouse Conservation Related to Wildland Fire and Fuels Management) or successor guidance, regarding suppression operations and fuels management activities.
- Identify opportunities for prescribed fire; including where prescribed fire has been identified as the most appropriate tool to meet fuels management objectives and Greater Sage-Grouse conservation objectives, and the potential expansion or dominance of invasive species has been determined to be minimal through an invasive species risk determination for the treatment project (see BLM Manual Section 9015). Before using prescribed fire, field offices must analyze the potential expansion or dominance of invasive species as a result of this treatment.

## Rights-of-Way (ROW) (e.g., Renewable Energy Projects, Roads, Powerlines, Pipelines)

### Existing Authorized ROW (i.e., permit has been issued and the project may have been constructed)

- Where Greater Sage-Grouse conservation opportunities exist, BLM field offices should work in cooperation with rights-of-way (ROW) holders to conduct maintenance and operation activities, authorized under an approved ROW grant, to avoid and minimize effects on Greater Sage-Grouse and its habitat.
- When renewing or amending ROWs, assess the impacts of ongoing use of the ROW to Greater Sage-Grouse habitat and minimize such impacts to the extent allowed by law.

### Pending and Future ROW Applications (i.e., permit application has not been received or has been received and is being processed)

- If the BLM has issued or, within 90 days of the issuance of this Instruction Memorandum, the BLM issues a Draft EIS (DEIS) or a Finding of No



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Significant Impact (FONSI) (i.e., permit application has been received and is currently being analyzed through an EIS or EA)

- o Work with applicants to minimize habitat loss, fragmentation, and direct and indirect effects to Greater Sage-Grouse and its habitat.
- o Determine, in coordination with the respective state wildlife agency, whether the proposed ROW would likely have more than minor adverse effects to Greater Sage-Grouse and its habitat. If the proposed ROW would likely have more than minor adverse effects, then implement the policies and procedures set forth in the section immediately below ("All Other Pending and Future Applications").

■ All Other Pending and Future Proposed Applications

- o Conduct pre-application meetings for all new ROW proposals consistent with the ROW regulations (43 CFR 2804.10) and consistent with current renewable energy ROW policy guidance (WO-IM-2011-061, issued February 7, 2011).
- o For pending applications, assess the impact of the proposed ROW on Greater Sage-Grouse and its habitat, and implement the following:
  - Ensure that reasonable alternatives for siting the ROW outside of the PPH or within a BLMâ€designated utility corridor are considered and analyzed in the NEPA document.
  - Identify technically feasible best management practices, conditions, etc. (e.g., siting, burying powerlines) that may be implemented in order to eliminate or minimize impacts.
- o For ROWs where the total project disturbance from the ROW and any connected action is less than 1 linear mile, or 2 acres of disturbance, develop mitigation measures related to construction, maintenance, operation, and reclamation activities that, as determined in cooperation with the respective state wildlife agency, would cumulatively maintain or enhance Greater Sage-Grouse habitat.
- o For ROW applications where the total project disturbance from the ROW and any connected action is greater than 1 linear mile or 2 acres of disturbance, it is BLM policy that where a field office determines that it is appropriate to authorize a ROW, the following process must be followed:
  - The BLM will document the reasons for its determination and require the ROW holder to implement measures to minimize impacts to sage-grouse habitat.
  - In addition to considering opportunities for onsite mitigation, the BLM will, to the extent possible, cooperate with project proponents to develop and consider implementing appropriate offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize habitat and population-level effects (Refer to WO-IM-2008-204, Off-Site Mitigation). When developing such mitigation, the BLM should consider compensating for the short-term and long-term direct and indirect loss of Greater Sage-Grouse and its habitat.
  - Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed ROW and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed ROW decision must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed ROW, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed ROW, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- o Field offices retain the discretion to reject or deny a ROW application, where appropriate, or defer making a final decision on an application until the completion of the LUP process described in the *National Greater Sage-Grouse Planning Strategy* for the affected area.

## Leasable Minerals (Energy and Non-energy)

Proposed Leasing (i.e., a lease has not been issued and, therefore, no valid existing rights have been established)

■ Solid Mineral Leasing (Coal, Oil Shale, and Non-energy)

Assess the impact to Greater Sage-Grouse and its habitat, and implement the following:

- o If the BLM has issued or, within 90 days of the issuance of this Instruction Memorandum, the BLM issues a DEIS or a FONSI:
  - Work in cooperation with applicants to minimize habitat loss, fragmentation, and direct and indirect effects to Greater Sage-Grouse and its habitat. Determine, in coordination with the respective state wildlife agency, whether the proposed leasing decision would likely have more than minor adverse effects to Greater Sage-Grouse and its habitat. If the proposed leasing decision would likely have more than minor adverse effects, then implement the policies and procedures set forth in the section immediately below ("All Other Proposed Solid Mineral Leasing").
- o All Other Proposed Solid Mineral Leasing

It is BLM policy that where a field office determines that it is appropriate to authorize a proposed leasing decision, the following process must be followed:

- The BLM will document the reasons for its determination and implement measures to minimize impacts to sage-grouse habitat.
- In addition to considering opportunities for onsite mitigation, the BLM will consider whether it is appropriate to condition the lease with a requirement for offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize habitat and population-level effects (refer to WO-IM-2008-204, Off-Site Mitigation).
- Unless the BLM determines, in coordination with their respective state wildlife agency, that the proposed lease and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed lease must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed lease, then the proposed decision must be forwarded to Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed lease, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- Exception: New leases may be issued for mine expansion provided the mines will undergo concurrent surface mine reclamation and will result in minimal additional surface disturbance adjacent to an existing operation.
- o Field offices retain the discretion to not move forward with a nomination, or defer making a final decision on a leasing nomination until the completion of the LUP process described in the *National Greater Sage-Grouse Planning Strategy* for the affected area.

■ Fluid Mineral Leasing (i.e., oil, gas, and geothermal)

- o It is BLM policy that where a field office determines that it is appropriate to authorize a proposed leasing decision, the following process must be followed:
  - The BLM will document the reasons for its determination and require the lessee to implement measures to minimize impacts to sage-grouse habitat.
  - In addition to considering opportunities for onsite mitigation, the BLM will consider whether it is appropriate to condition the lease with a requirement for offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize



- habitat and population-level effects (refer to WO-IM-2008-204, Off-Site Mitigation).
- Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed lease and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed lease decision must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed lease, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed lease, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- Exception: Where drainage is likely or the lands are designated as No Surface Occupancy (NSO) in the existing LUP, the BLM may issue new leases with an NSO stipulation. The NSO stipulation will also have appropriate exception, waiver, and modification criteria. **Note:** A Controlled Surface Use stipulation is not an appropriate substitution for an NSO stipulation.
- Field offices retain the discretion to not move forward with a nomination or defer making a final decision on a leasing decision until the completion of the LUP process described in the *National Greater Sage-Grouse Planning Strategy* for the affected area.

Authorizations on Existing Leases (i.e., the lease has been issued and valid existing rights have been established)

- Existing Authorizations (i.e., a permit has been issued)
  - Where Greater Sage-Grouse conservation opportunities exist, work in cooperation with operators to minimize habitat loss, fragmentation, and direct and indirect effects to Greater Sage-Grouse and its habitat.
  - Fluid Minerals: Issue Written Orders of the Authorized Officer (43 CFR 3161.2) requiring reasonable protective measures consistent with the lease terms where necessary to avoid or minimize effects to Greater Sage-Grouse populations and its habitat.
- Proposed Pending Authorizations (i.e., permit application has not been received or has been received and is being processed)
  - If the BLM has issued or, within 90 days of the issuance of this Instruction Memorandum, the BLM issues a DEIS or a FONSI:
    - Work in cooperation with applicants to minimize habitat loss, fragmentation, and direct and indirect effects to Greater Sage-Grouse and its habitat.
    - Determine, in coordination with the respective state wildlife agency, whether the proposed authorization would likely have more than minor adverse effects to Greater Sage-Grouse and its habitat. If the proposed authorization would likely have more than minor adverse effects, then implement the policies and procedures set forth in the section immediately below ("All Other Proposed Authorizations").
  - All Other Proposed Authorizations  
It is BLM policy that where a field office determines that it is appropriate to issue a proposed authorization, the following process must be followed:
    - Where the BLM has not issued a permit for development, design future conditions or restrictions to minimize adverse effects to Greater Sage-Grouse and its habitat (e.g., Best Management Practices (BMP), noise limitations, seasonal restrictions, minimization of habitat fragmentation, improved reclamation standards, proper siting/designing infrastructure, restoring habitat) prior to permit approval. These measures may be in addition to and more protective or restrictive than the stipulations and restrictions identified in approved LUPs, when reasonable (43 CFR 3101.1-2), supported by science, and analyzed through the NEPA process.
    - Fluid Minerals: Consider suspending non-producing leases in instances where mitigation would not adequately protect the integrity of Greater Sage-Grouse habitat until the BLM amends or revises the LUPs. Consistently apply protective measures to split estate lands.
    - In areas where Greater Sage-Grouse populations have been substantially diminished, and where few birds remain, include actions in the authorization (e.g., siting/designing infrastructure, hastened habitat restoration) that will minimize habitat loss and promote restoration of habitat when development activities cease.
    - In addition to considering opportunities for onsite mitigation, the BLM will, to the extent possible, cooperate with project proponents to develop and consider implementing appropriate offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize habitat and population-level effects (refer to WO-IM-2008-204, Off-Site Mitigation). When developing such mitigation, the BLM should consider compensating for the short-term and long-term direct and indirect loss of Greater Sage-Grouse and its habitat.
    - For geophysical exploration activities, include seasonal timing limitations and BMPs as permit conditions of approval to eliminate or minimize surface-disturbing and disruptive activities within nesting and brood-rearing habitat and winter concentration areas.
    - Fluid Minerals: Ensure authorizations under Onshore Oil and Gas Order No. 7 (Disposal of Produced Water) consider the potential impacts to Greater Sage-Grouse from West Nile virus and develop appropriate mitigation measures.

#### Grazing Permit/Leases Issuance/Grazing Management

Grazing can have localized adverse effects on Greater Sage-Grouse habitat depending on the condition of the habitat and the grazing practices used. Depending on design and application, grazing practices can also be used as a tool to protect intact sagebrush habitat and increase habitat extent and continuity which is beneficial to Greater Sage-Grouse and its habitat. Given the potential financial constraints in addressing the primary threats identified by the FWS, enhanced management of livestock grazing may be the most cost-effective opportunity in many instances to improve Greater Sage-Grouse habitat on public lands.

To promote grazing practices that will protect PPH and minimize adverse effects on Greater Sage-Grouse and its habitat, the BLM will implement the following:

#### Ongoing Authorization Activities

- If periods of drought occur, where appropriate evaluate the season of use and stocking rate and adjust through coordination and annual billings processes.
- Continue to coordinate with other Federal agencies, state agencies, and non-Federal partners. Leverage funding to implement habitat projects and implement the recent Memorandum of Understanding between the BLM, NRCS, FWS, and USFS for enhancing PPH through grazing practices.
- Continue to prioritize use supervision and effectiveness monitoring of grazing activities to ensure compliance with permit conditions and that progress is being made on achieving land health standards.
- Continue to evaluate existing range improvements (e.g., fences, watering facilities) associated with grazing management operations for impacts on Greater Sage-Grouse and its habitat.

#### Proposed Authorizations/Activities – Permit/Lease Renewal/Issuance

- When several small or isolated allotments occur within a watershed or delineated geographic area, strive to evaluate all of the allotments together. Prioritize this larger geographic area against other PPH areas for processing permits/leases for renewal.
- Coordinate BMPs and vegetative objectives with NRCS for consistent application across jurisdictions where the BLM and NRCS have the greatest opportunities to benefit Greater Sage-Grouse, particularly as it applies to the NRCS's National Sage-Grouse Initiative (<http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/initiatives/?&cid=steldevb1027671>).
- Pursue opportunities to incorporate multiple allotments under a single management plan/strategy where incorporation would result in enhancing Greater Sage-Grouse populations or its habitat as determined in coordination with respective state wildlife agency.
- Where current livestock grazing management has been identified as a causal factor in not meeting Land Health Standards (43 CFR 4180), use the process in WO-IM-2009-007, Process for Evaluating Status of Land Health and Making Determinations of Causal Factors When Land Health Standards Are Not Achieved, to identify appropriate actions.
- Evaluate progress towards meeting standards that may affect Greater Sage-Grouse or its habitat prior to authorizing grazing on an allotment that was not achieving land health standards in the last renewal cycle, and livestock was a significant causal factor. Where available, use current monitoring data



to identify any trends (e.g., progress) toward meeting the standards. Where monitoring data are not available or inadequate to determine whether progress is being made toward achieving Land Health Standards, an interdisciplinary team should be deployed as practicable to conduct a new land health assessment. The NEPA analysis for the permit/lease renewal must address a range of reasonable alternatives including alternatives that improve Greater Sage-Grouse habitat.

- If livestock grazing was the cause of not achieving land health standards that have potential to impact Greater Sage-Grouse or its habitat in the last permit renewal cycle, an interdisciplinary team should be deployed as practicable to conduct a new land health evaluation to determine if the allotment is making progress and if livestock grazing remains a casual factor.
- Plan and authorize livestock grazing and associated range improvement projects on BLM lands in a way that maintains and/or improves Greater Sage-Grouse and its habitat. Analyze through a reasonable range of alternatives any direct, indirect, and cumulative effects of grazing on Greater Sage-Grouse and its habitats through the NEPA process:
  - Incorporate available site information collected using the *Sage-Grouse Habitat Assessment Framework* [2] when evaluating existing resource condition and developing resource solutions,
  - Incorporate management practices that will provide for adequate residual plant cover (e.g., residual grass height) and diversity in the understories of sagebrush plant communities as part of viable alternatives. When addressing residual cover and species diversity, refer to the ESD and "State and Transition Model," where they are available, to guide the analysis.
  - Evaluate and implement grazing practices that promote the growth and persistence of native shrubs, grasses, and forbs. Grazing practices include kind and numbers of livestock, distribution, seasons of use, and livestock management practices needed to meet both livestock management and Greater Sage-Grouse habitat objectives.
  - Evaluate the potential risk to Greater Sage-Grouse and its habitats from existing structural range improvements. Address those structural range improvements identified as posing a risk during the renewal process.
  - Balance grazing between riparian habitats and upland habitats to promote the production and availability of beneficial forbs to Greater Sage-Grouse in meadows, mesic habitats, and riparian pastures for Greater Sage-Grouse use during nesting and brood-rearing while maintaining upland conditions and functions. Consider changes to season-of-use in riparian/wetland areas before or after the summer growing season.
- To ensure that the NEPA analysis for permit/lease renewal has a range of reasonable alternatives:
  - Include at least one alternative that would implement a deferred or rest-rotation grazing system, if one is not already in place and the size of the allotment warrants it.
  - Include a reasonable range of alternatives (e.g., no grazing or a significantly reduced grazing alternative, current grazing alternative, increased grazing alternative, etc.) to compare the impacts of livestock grazing on Greater Sage-Grouse habitat and land health from the proposed action.
  - If land treatments and/or range improvements are the primary action for achieving land health standards for Greater Sage-Grouse habitat maintenance or enhancement, clearly display the effects of such actions in the alternatives analyzed.

#### Fences (Applicable to all programs)

- Evaluate the need for proposed fences, especially those within 1.25 miles<sup>3</sup> of leks that have been active within the past 5 years and in movement corridors between leks and roost locations. Consider deferring fence construction unless the objective is to benefit Greater Sage-Grouse habitat, improve land health, promote successful reclamation, protect human health and safety, or provide resource protection. If the BLM authorizes a new fence, then, where appropriate, apply mitigation (e.g., proper siting, marking, post and pole construction) to minimize or eliminate potential impacts to Greater Sage-Grouse as determined in cooperation with the respective state wildlife agency.
- To improve visibility, mark existing fences that have been identified as a collision risk. Prioritizing fences within 1.25 miles[3] of a lek, fences posing higher risks to Greater Sage-Grouse include those:
  - On flat topography;
  - Where spans exceed 12 feet between T-posts;
  - Without wooden posts; or
  - Where fence densities exceed 1.6 miles of fence per section (640 acres).<sup>3</sup>

#### Water Developments (applicable to all programs)

##### Proposed Authorizations/Activities

- NEPA analysis for all new water developments must assess impacts to Greater Sage-Grouse and its habitat.
- Install escape ramps and a mechanism such as a float or shut-off valve to control the flow of water in tanks and troughs.
- Design structures in a manner that minimizes potential for production of mosquitoes which may carry West Nile virus.

#### Special Recreation Permits

##### Ongoing Authorization/Activities

- Work with permittees to avoid or minimize effects to Greater Sage-Grouse and its habitat.
- Evaluate existing Special Recreation Permits (SRP) for adverse effects to Greater Sage-Grouse and modify or cancel the permit, as appropriate, to avoid or minimize effects of habitat alterations or other physical disturbances to Greater Sage-Grouse (e.g., breeding, brood-rearing, migration patterns, or winter survival).
- Implement any necessary habitat restoration activities after SRP events. Restoration activities must be consistent with Greater Sage-Grouse habitat objectives as determined by the BLM field office in collaboration with the respective state wildlife agency.

##### Proposed Authorizations/Activities

- Work with permit applicants to avoid impacts to Greater Sage-Grouse and its habitat.
- It is BLM policy that where a field office determines that it is appropriate to authorize a proposed special recreation permit, the following process must be followed:
  - The BLM will document the reasons for its determination and require the permittee to implement measures to minimize impacts to sage-grouse habitat.
  - In addition to considering opportunities for onsite mitigation, the BLM will consider whether it is appropriate to condition the permit with a requirement for offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize habitat and population-level effects (refer to WO-IM-2008-204, Off-Site Mitigation).
  - Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed permit and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed special recreation permit decision must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed special recreation permit, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed special recreation permit, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- Field offices retain the discretion to not move forward with a special recreation permit application or defer making a final decision on a special recreation



permit decision until the completion of the LUP process described in the *National Greater Sage-Grouse Planning Strategy* for the affected area.

#### Recreation Sites

- Use conservation measures to avoid impacts to Greater Sage-Grouse at existing recreation sites.
- Consider closing recreational sites either seasonally or permanently and restricting traffic to avoid or minimize effects of habitat alterations or other physical disturbances to Greater Sage-Grouse (e.g., breeding, brood-rearing, migration patterns, or winter survival).

#### Travel Management

##### Ongoing Authorizations/Activities

- Evaluate authorizations and use and implement seasonal road/primitive road/trail restrictions if continued use would result in habitat alterations or other survival, as appropriate.
- Place a high priority on closing and reclaiming unauthorized motor vehicle routes.
- Limit and enforce motorized vehicle use to existing or designated roads, primitive roads, and trails and seasons of use to prevent habitat loss or other physical disturbance that impair life history functions of the Greater Sage-Grouse, such as breeding, migration patterns, or winter survival.

##### Proposed Authorizations/Activities

- Route construction should be limited to realignments of existing or designated routes to enhance other resources only if that realignment conserves or enhances sage-grouse habitat. Use existing roads, or realignments as described above, to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing roads, then any new road constructed will be built to the absolute minimum standard necessary. No improvement to existing routes will occur that would change route category (i.e., road, primitive road, or trail) or enhance capacity.

#### Locatable Minerals

##### Ongoing Authorizations/Activities (i.e., existing operations conducted under a Notice or a Plan of Operations)

- Request that holders of Notices and Plans of Operation modify their operations to avoid or minimize adverse effects on Greater Sage-Grouse and its habitat. Operators must be informed in the request that compliance is not mandatory.

##### Proposed Authorizations/Activities (i.e., new Notices or Plans of Operation)

- Require that new notices and plans of operation include measures to avoid or minimize adverse effects to Greater Sage-Grouse populations and its habitat. Ensure that new notices and plans of operation comply with the requirements in 43 CFR 3809 to prevent unnecessary or undue degradation. Such compliance may assist in avoiding or minimizing adverse effects to Greater Sage-Grouse populations and habitat.

#### Salable Minerals

##### Ongoing Authorizations/Activities (i.e., an authorization has been issued)

- Where valid existing rights exist, work with the holders of authorizations to develop actions such as siting/design of infrastructure, timing of operations, or reclamation standards that will avoid or minimize effects to Greater Sage-Grouse populations and its habitat.

##### Proposed Authorizations/Activities

- If the BLM has issued or, within 90 days of the issuance of this Instruction Memorandum, the BLM issues a DEIS or a FONSI:
  - Work with applicants to minimize habitat loss, fragmentation, and direct and indirect effects to Greater Sage-Grouse and its habitat.
  - Determine, in coordination with the respective state wildlife agency, whether the proposed authorization would likely have more than minor adverse effects to Greater Sage-Grouse and its habitat. If the proposed authorization would likely have more than minor adverse effects, then implement the policies and procedures set forth in the section immediately below ("All Other Proposed Authorizations/Activities").

- All Other Proposed Authorizations/Activities

It is BLM policy that where a field office determines that it is appropriate to issue an authorization, the following process must be followed:

- The BLM will document the reasons for its determination and implement measures to minimize impacts to sage-grouse habitat.
- In addition to considering opportunities for onsite mitigation, the BLM will, to the extent possible, cooperate with project proponents to develop and consider implementing appropriate offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize habitat and population-level effects (refer to WO-IM-2008-204, Off-Site Mitigation). When developing such mitigation, the BLM should consider compensating for the short-term and long-term direct and indirect loss of Greater Sage-Grouse and its habitat.
- Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed pit and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed pit authorization decision must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed authorization, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed authorization, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- Exception- Pit Expansion Only: New permits may be issued for pit expansion, provided there are no adverse effects on Greater Sage-Grouse and its habitat.
- Field offices retain the discretion to not move forward with an authorization, where appropriate, or defer making a final decision on regarding an authorization until the completion of the LUP process described in the *National Greater Sage-Grouse Planning Strategy* for the affected area.

#### Grasshopper and Mormon Cricket Control and Management

##### Proposed Authorizations/Activities

- If grasshopper control is proposed, the NEPA analysis must address impacts on Greater Sage-Grouse and its habitat.
- Continue to implement WO-IM-2010-084, Grasshopper and Mormon Cricket Treatments within Sage-grouse Habitat, and reference WY-IM-2010-12, Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands including the Federal



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- Mineral Estate, for grasshopper or Mormon cricket control.
- Coordinate with local Animal and Plant Health Inspection Service (APHIS) personnel and state wildlife agencies concerning treatments in Greater Sage-Grouse habitat.
- Management actions and operating procedures may include, but are not limited, to the following:
  - o Evaluate and restrict or modify treatment methods and timing of use or other mitigation.
  - o Avoid spraying treatment areas in May and June (or as appropriate to local circumstances) to provide insect availability for early development of Greater Sage-Grouse chicks.
  - o Application timing should be implemented to reduce disturbance and impacts to Greater Sage-Grouse.
  - o Use approved chemicals with the lowest toxicity to Greater Sage-Grouse that still provide effective control of grasshopper and Mormon cricket.
  - o Coordinate with APHIS to determine the approved chemical with the lowest toxicity.
  - o Evaluate the appropriate percentages of Environmental Protection Agency (EPA) allowable chemical rates and the pros and cons of available chemical use, in coordination with state wildlife agencies, FWS, and APHIS.
  - o Use *Carbaryl* only when necessary to treat large grasshopper and Mormon cricket populations late in the season. APHIS will coordinate the use with the respective BLM state office prior to any application.
  - o Implement effectiveness monitoring, if warranted.

## Wild Horse and Burro Management

### Ongoing Authorizations/Activities

- Manage wild horse and burro population levels within established Appropriate Management Levels (AML).
- Wild Horse Herd Management Areas will receive priority for removal of excess horses.
- Wild horses and burros remaining in Herd Management Areas where the AML has been established as zero will receive priority for removal.
- When developing overall workload priorities for the upcoming year, prioritize horse gathers except where removals are necessary in non-PPH to prevent catastrophic herd health and ecological impacts.

## Realty Actions (e.g., Land Exchanges, Transfers, and Sales)

It is BLM policy that where a field office determines that it is appropriate to implement a public land disposal action, the following process must be followed:

- The BLM will document the reasons for its determination and implement measures to minimize impacts to sage-grouse habitat. Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed land disposal action would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed land disposal action must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed land disposal action, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed land disposal action, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- Exception: Those land disposal actions (e.g., the BLM's acceptance of an Application for Land for Recreation and Public Purposes, Publication of a Federal Register Notice of Realty Action, Execution of an Agreement to Initiate an Exchange, the BLM's acceptance of a State Application for Selection) initiated prior to or if the BLM is within 90 days of the issuance of a DEIS or FONSI for a land disposal action following the date of this IM.

## Vegetation and Resource Monitoring

### Ongoing Authorizations/Activities

- Continue to coordinate with NRCS and its contractors to implement the BLM *Landscape Monitoring Framework Project* developed under the *Assessment, Inventory and Monitoring Strategy* to assess the condition of public lands including PPH at a landscape level.
- Continue to work with livestock grazing permittees/lessees to collect specific kinds of monitoring information on their allotments to supplement monitoring information collected by the BLM (refer to WO-IB-2010-015, Grazing Permittee - Joint Cooperative Monitoring, for additional information).
- Until further direction is provided, and within the range of the Greater Sage-Grouse, the Wildlife Program (1110) will collect, consolidate, and report the following annually to the Division of Fish and Wildlife Conservation (WO-230):
  - o Miles, acres, and/or number of structures (e.g., fences, water developments, well pads, gravel pits, roads) removed, installed, relocated, decommissioned, modified, or mitigated to benefit Greater Sage-Grouse and its habitat;
  - o Number of BLM use authorizations issued or deferred and the associated acres where changes in management were implemented to benefit Greater Sage-Grouse and its habitat;
  - o Acres where the BLM implemented changes in use in order to improve habitat for the Greater Sage-Grouse in cooperation with other Federal or state agencies;
  - o Acres of habitat altered by wildland fire, acres treated after fire, and acres not treated after fire that were in need of treatment;
  - o Acres of habitat altered by fuels treatment projects and how those treatments affected habitat;
  - o Acres of vegetation treated to benefit Greater Sage-Grouse habitat; and
  - o Number of allotments assessed for land health standards and the associated acres, according to Table 7A of the *Rangeland Inventory, Evaluation and Monitoring Report*.

### Proposed Authorizations/Activities

- New activity plans and/or project plans must include clear objectives to benefit Greater Sage-Grouse habitat and vegetative resource conditions. Base these vegetative objectives on (1) the native shrub reference state as shown in the *State and Transition Model* outlined in the applicable ESD, where available; (2) published scientific habitat guidelines for specific areas; and (3) local sage-grouse working group recommendations.
- Monitor activities and projects using the BLM core indicators and protocols (see the BLM *Assessment, Inventory and Monitoring Strategy*) to ensure that the objectives are being met. Supplement data collection, as necessary, with other programmatic information for the site to demonstrate that objectives are being met.
- Complete habitat inventories/assessments using the *Sage-Grouse Habitat Assessment Framework* in a timely manner so that data are available for consideration in livestock grazing permit renewals and other management decisions.

## II. Interim Conservation Policies and Procedures for "Preliminary General Habitat"

The intent of these interim conservation policies and procedures in PGH is to reduce and mitigate adverse effects on Greater Sage-Grouse and its habitat to the extent practical. These policies and procedures differ from those applied to PPH.

- When approving uses and authorizations, consider and analyze management measures that would reduce direct, indirect, and cumulative adverse effects on Greater Sage-Grouse and its habitat. For example, consider alternatives that would increase buffer distances around active leks and timing



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restrictions within existing LUPs as needed to further reduce adverse effects on Greater Sage-Grouse and its habitat.

- Consider deferring authorizations in PGH where appropriate, depending on local characteristics, new science and/or data (e.g., migratory corridors or habitat between PPH), and relative habitat importance if authorizations could result in Greater Sage-Grouse population loss in PPH.
- Consider offsite mitigation measures in collaboration with state wildlife agencies and project proponents when authorizing activities.
- Evaluate and address anticipated fence collision risks within 1.25 miles<sup>3</sup> of leks and other seasonal habitats. Where NEPA analysis suggests that a deviation from this distance is warranted, modifications of this distance are acceptable.

**Timeframe:** This IM is effective immediately and will remain in effect until the BLM completes the LUP process described in the *National Greater Sage-Grouse Planning Strategy*.

**Budget Impact:** This IM will result in additional costs for coordination, NEPA review, planning, implementation, and monitoring.

**Background:** In March 2010, the FWS published its petition decision for the Greater Sage-Grouse as "Warranted but Precluded." Inadequacy of regulatory mechanisms was identified as one of the major factors in the FWS's finding on Greater Sage-Grouse. The FWS has identified the principal regulatory mechanism for the BLM as protective measures embedded in LUPs. The BLM is identifying sage-grouse conservation measures for consideration through the planning process, with a target decision date of September 2014. The goal is to conserve habitat necessary to sustain Greater Sage-Grouse populations and reduce the likelihood of listing under the Endangered Species Act.

In July 2011, the BLM announced the *National Greater Sage-Grouse Planning Strategy* which provides a framework for establishing adequate regulatory mechanisms (conservation measures) in applicable BLM LUPs throughout the range of the Greater Sage-Grouse.

**Manual/Handbook Sections Affected:** None.

**Coordination:** This IM was coordinated with the Office of National Landscape Conservation System and Community Partnership (WO-400), Assistant Director, Renewable Resources and Planning (WO-200), Minerals and Realty Management (WO-300), Fire and Aviation (FA-100), BLM state offices, FWS, and state wildlife agencies.

**Contact:** State Directors may direct any questions or concerns to Edwin Roberson, Assistant Director, Renewable Resources and Planning (WO-200), at 202-208-4896 or [eroberso@blm.gov](mailto:eroberso@blm.gov), and Michael D. Nedd, Assistant Director, Minerals and Realty Management (WO-300), at 202-208-4201 or [mnedd@blm.gov](mailto:mnedd@blm.gov).

Signed by:  
Mike Pool  
Acting, Director

Authenticated by:  
Ambyr Fowler  
Division of IRM Governance, WO- 560

1 Attachment  
1-Definitions (2 pp)

[1] Doherty, K. E., J.D. Tack, J.S. Evans and D. E. Naugle. 2010. Mapping breeding densities of Greater Sage-Grouse: A tool for range-wide conservation planning. BLM Completion Report: Interagency Agreement # L10PG00911.

[2] Stiver, S.J., E.T. Rinkes, AND D.E. Naugle. 2010. Sage-grouse Habitat Assessment Framework. U.S. Bureau of Land Management. Unpublished Report. U.S. Bureau of Land Management, Idaho State Office, Boise, Idaho.

[3] Stevens, B.S. 2011. Impacts of Fences on Greater Sage-Grouse in Idaho: Collision, Mitigation, and Spatial Ecology (Master's Thesis). University of Idaho, Moscow, Idaho.

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**K.5 State of Wyoming Executive Order 2011-5: Greater Sage-Grouse Core Area Protection**

MATTHEW H. MEAD  
GOVERNOR



STATE CAPITOL  
CHEYENNE, WY 82002

## Office of the Governor

### STATE OF WYOMING EXECUTIVE DEPARTMENT EXECUTIVE ORDER

Order 2011-5  
(Replaces 2010-4)

#### GREATER SAGE-GROUSE CORE AREA PROTECTION

WHEREAS, the Greater Sage-Grouse (*Centrocercus urophasianus*) inhabits much of the sagebrush-steppe habitat in Wyoming; and

WHEREAS, the sagebrush-steppe habitat type is abundant across the state of Wyoming; and

WHEREAS, the state of Wyoming currently enjoys robust populations of Greater Sage-Grouse; and

WHEREAS, the state of Wyoming has management authority over Greater Sage-Grouse populations in Wyoming; and

WHEREAS, the Greater Sage-Grouse has been the subject of several petitions to list the species as a threatened or endangered species pursuant to the Endangered Species Act; and

WHEREAS, the United States Department of the Interior has determined that listing the Greater Sage-Grouse as a threatened or endangered species is warranted over all of its range, including the populations in Wyoming; and

WHEREAS, the United States Department of the Interior has determined that listing the Greater Sage-Grouse as a threatened or endangered species is currently precluded by higher priority listing actions; and

WHEREAS, the Greater Sage-Grouse is currently considered a "candidate" species under the auspices of the Endangered Species Act; and

WHEREAS, the United States Department of the Interior is required to review the status of all candidate species every year; and

WHEREAS, the listing of the Greater Sage-Grouse would have a significant adverse effect on the economy of the state of Wyoming, including the ability to generate revenues from state lands; and

WHEREAS, the listing of the Greater Sage-Grouse would have a significant adverse effect on the custom and culture of the state of Wyoming; and



**WHEREAS**, the Wyoming State Legislature and other agencies have dedicated significant state resources to conserve Greater Sage-Grouse populations in Wyoming; and

**WHEREAS**, the state of Wyoming has developed a “Core Population Area” strategy to weave the many on-going efforts to conserve the Greater Sage-Grouse in Wyoming into a statewide strategy; and

**WHEREAS**, members of the Sixtieth Legislature of the State of Wyoming signed a Joint Resolution recognizing “the Greater Sage Grouse Core Area Strategy [then embodied under Governor’s Executive Order 2008-2] as the State of Wyoming’s primary regulatory mechanism to conserve sage-grouse and preclude the need for listing the bird as a threatened or endangered species pursuant to the Endangered Species Act of 1973.”; and

**WHEREAS**, on April 17, 2008, the Office of the Governor requested that the U.S. Fish and Wildlife Service review the “Core Population Area” strategy to determine if it was a “sound policy that should be moved forward” and on May 7, 2008, the U.S. Fish and Wildlife Service responded that the “core population area strategy, as outlined in the Implementation Team’s correspondence to the Governor, is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming”; and

**WHEREAS**, on November 10, 2010, the U.S. Fish and Wildlife Service again confirmed that “This long-term, science-based vision for the conservation of greater sage-grouse has set the stage for similar conservation efforts across the species range,” and that “the Core Population Area Strategy for the greater sage-grouse provides an excellent model for meaningful conservation of sage-grouse is fully supported and implemented”; and

**WHEREAS**, several western states have adopted or are considering adopting the Wyoming Core Area Strategy, thus making the concept consistent across the species range; and

**WHEREAS**, new science, information and data continue to emerge regarding “Core Population Areas” and the habitats and behaviors of the Greater Sage-Grouse, which led the Governor’s Sage-Grouse Implementation Team to re-evaluate the original “core population areas” and protective stipulations for Greater Sage-Grouse.

**NOW, THEREFORE**, pursuant to the authority vested in me by the Constitution and Laws of the State, and to the extent such actions are consistent with the statutory obligations and authority of each individual agency including those found in Title 9, Chapter 5, Article 3 of Wyoming State Statutes, otherwise cited as the Wyoming Regulatory Takings Act, I, Matthew H. Mead, Governor of the State of Wyoming, do hereby issue this Executive Order providing as follows:

1. Management by state agencies should focus on the maintenance and enhancement of Greater Sage-Grouse habitats, populations and connectivity areas identified in Attachment A. Absent substantial and compelling information, these Core Population Areas should not be altered for at least five (5) years.
2. Existing land uses within Core Population Areas should be recognized and respected by state agencies. It is assumed that activities existing in Core Population Areas prior to August 1, 2008 will not be managed under Core Population Area stipulations. Examples of existing activities include oil and gas, mining, agriculture, processing facilities, housing and other uses that were in place prior to the development of the Core Population Areas (prior to August 1, 2008). Provided these activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.) they should be allowed to continue within the existing boundary, even if the



use exceeds recommended stipulations (see Attachment B) recognizing that all applicable federal actions shall continue.

3. New development or land uses within Core Population Areas should be authorized or conducted only when it can be demonstrated that the activity will not cause declines in Greater Sage-Grouse populations.
4. Development consistent with the stipulations set forth in Attachment B shall be deemed sufficient to demonstrate that the activity will not cause declines in Greater Sage-Grouse populations.
5. Funding, assurances (including efforts to develop Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances), habitat enhancement, reclamation efforts, mapping and other associated proactive efforts to assure viability of Greater Sage-Grouse in Wyoming should be focused and prioritized to take place in Core Population Areas.
6. To the greatest extent possible, a non-regulatory approach shall be used to influence management alternatives within Core Population Areas. Management alternatives should reflect unique localized conditions, including soils, vegetation, development type, predation, climate and other local realities.
7. For activities outside of Core Population Areas, no more than a one-quarter (1/4) mile no surface occupancy standard and a two (2) mile seasonal buffer should be applied to occupied leks. Incentives to enable development of all types outside Core Population Areas should be established (these should include stipulation waivers, enhanced permitting processes, density bonuses, and other incentives). Development scenarios should be designed and managed to maintain populations, habitats and essential migration routes where possible. It is recognized that some incentives may result in reduced numbers of sage-grouse outside of Core Population Areas.
8. Incentives to accelerate or enhance required reclamation in habitats adjacent to Core Population Areas should be developed, including but not limited to stipulation waivers, funding for enhanced reclamation, and other strategies. It is recognized that some incentives may result in reduced numbers of sage-grouse outside of the Core Population Areas.
9. Existing rights should be recognized and respected.
10. On-the-ground enhancements, monitoring, and ongoing planning relative to sage-grouse and sage-grouse habitat should be facilitated by sage-grouse local working groups whenever possible.
11. Fire suppression efforts in Core Population Areas should be emphasized, recognizing that other local, regional, and national suppression priorities may take precedent. However, public and firefighter safety remains the number one priority for all fire management activities.
12. State and federal agencies, including the U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, and other federal agencies shall work collaboratively to ensure a uniform and consistent application of this Executive Order to maintain and enhance Greater Sage-Grouse habitats and populations.
13. State agencies shall work collaboratively with local governments and private landowners to maintain and enhance Greater Sage-Grouse habitats and populations in a manner consistent with this Executive Order.



14. It is critical that existing land uses and landowner activities continue to occur in core areas, particularly agricultural activities on private lands. For the most part, these activities on private lands are not subject to state agency review or approval. Only those activities occurring after August 1, 2008 which state agencies are required by state or federal statute to review or approve are subject to consistency review. This Executive Order in no way adds or expands the review or approval authority of any state agency. It is acknowledged that such land uses and activities could have localized impacts on Greater Sage-Grouse. To offset these impacts, Core Population Areas have been mapped to include additional habitat beyond that strictly necessary to prevent listing of the species. The additional habitat included within the Core Population Area boundaries is adequate to accommodate continuation of existing land uses and landowner activities. As a result, state agencies are not required to review most existing land uses and landowner activities in Core Population Areas for consistency with this Executive Order. Attachment C contains a list of existing land uses and landowner activities that do not require review for consistency.

15. It will be necessary to construct significant new transmission infrastructure to transport electricity generated in Wyoming to out-of-state load centers. New transmission lines constructed within Core Population Areas will be consistent with this Executive Order if they are constructed between July 1 and March 14 (or between July 1 and November 30 in winter concentration areas) and within one half (1/2) mile either side of existing (prior to Governor's Executive Order 2010-4) 115 kV or larger transmission lines creating a corridor no wider than one (1) mile. New transmission lines outside this one (1) mile wide corridor within Core Population Areas should be authorized or conducted only when it can be demonstrated that the activity will not cause declines in Greater Sage-Grouse populations.

16. For purposes of consistency with this Executive Order there is established a transmission line corridor through Core Population Areas in south central and southwestern Wyoming as illustrated on Attachment D. This two (2) mile wide corridor represents the state of Wyoming's preferred alternative for routing transmission lines across the southern portion of the state while reducing impacts to Core Population Areas and other natural resources. New transmission lines constructed within this corridor shall be considered consistent with this Executive Order if construction occurs within the corridor between July 1 and March 14 (or between July 1 and November 30 in winter concentration areas).

17. New distribution, gathering, and transmission lines sited outside established corridors within Core Population Areas should be authorized or conducted only when it can be demonstrated by the state agency that the activity will not cause declines in Greater Sage-Grouse populations.

18. State agencies shall strive to maintain consistency with the items outlined in this Executive Order, but it should be recognized that adjustments to the stipulations may be necessary based upon local conditions and limitations. The goal is to minimize future disturbance by co-locating proposed disturbances within areas already disturbed or naturally unsuitable.


19. The protective stipulations outlined in this Executive Order should be reevaluated on a continuous basis and at a minimum annually, as new science, information and data emerge regarding Core Population Areas and the habitats and behaviors of the Greater Sage-Grouse.

20. State agencies shall report to the Office of the Governor within ninety (90) days of signing and annually thereafter detailing their actions to comply with this Executive Order.

This Executive Order shall remain in effect until August 18, 2015, at which time all provisions of this Executive Order shall be reevaluated.

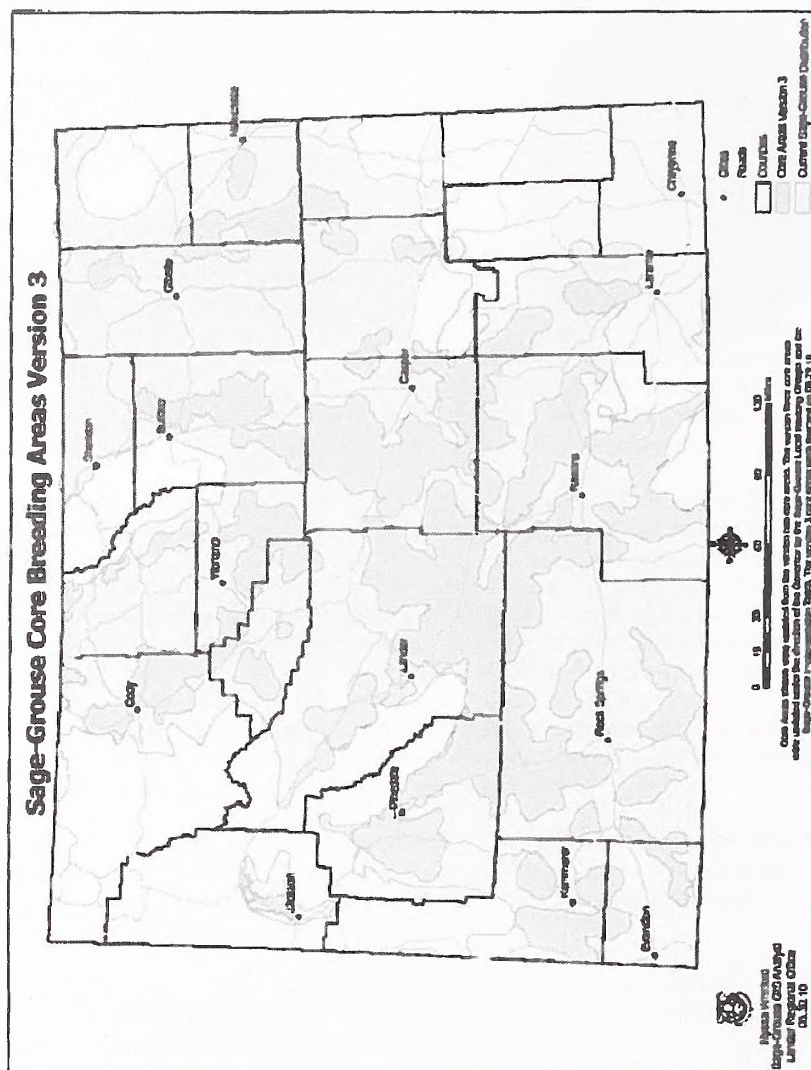
Given under my hand and the Executive Seal of the State of Wyoming this 2 day of Dec, 2011.



  
Matthew H. Mead  
Governor



# ATTACHMENT A



**ATTACHMENT B****Permitting Process and Stipulations for Development  
in Sage-Grouse Core Areas****PERMITTING PROCESS**

**Point of Contact:** The first point of contact for addressing sage-grouse issues for any state permit application should be the Wyoming Game and Fish Department (WGFD). Project proponents (proponents) need to have a thorough description of their project and identify the potential effects on sage-grouse prior to submitting an application to the permitting agency (details such as a draft project implementation area analysis, habitat maps and any other information will help to expedite the project). Project proponents should contact WGFD at least 45-60 days prior to submitting their application. More complex projects will require more time. It is understood that WGFD has a role of consultation, recommendation, and facilitation, and has no authority to either approve or deny the project. The purpose of the initial consultation with the WGFD is to become familiar with the project proposal and ensure the project proponent understands recommended stipulations and stipulation implementation process.

**Maximum Disturbance Process:** All activities will be evaluated within the context of maximum allowable disturbance (disturbance percentages, location and number of disturbances) of suitable sage-grouse habitat (See Appendix 1 for definition of suitable sage-grouse habitat and disturbance of suitable sage-grouse habitat) within the area affected by the project. The maximum disturbance allowed will be analyzed via a Density/Disturbance Calculation Tool (DDCT) process conducted by the Federal Land Management Agency on federal Land and the project proponent on non-federal (private, state) land. Unsuitable habitat occurring within the project area will not be included in the disturbance cap calculations.

1. Density/Disturbance Calculation Tool (DDCT): Determine all occupied leks within a core population area that may be affected by the project by placing a 4 mile boundary around the project boundary (as defined by the proposed area of disturbance related to the project). All occupied leks located within the 4 mile boundary and within a core population area will be considered affected by the project.

A four-mile boundary will then be placed around the perimeter of each affected lek. The core population area within the boundary of affected leks and the 4 mile boundary around the project boundary creates the DDCT for each individual project. Disturbance will be analyzed for the DDCT as a whole and for each individual affected lek within the DDCT. Any portion of the DDCT occurring outside of core area will be removed from the analysis.

If there are no affected leks within the 4 mile boundary around the project boundary, the DDCT area will be that portion of the 4 mile project boundary within the core population area.

2. Disturbance analysis: Total disturbance acres within the DDCT will be determined through an evaluation (Appendix 1) of:
  - a. Existing disturbance (sage-grouse habitat that is disturbed due to existing anthropogenic activity and wildfire).



- b. Approved permits (that have approval for on the ground activity) not yet implemented.
- 3. Habitat Assessment:
  - a. A habitat assessment is not needed for the initial DDCT area provided that the entire DDCT area is considered suitable.
  - b. A habitat assessment should be conducted when the initial DDCT indicates proposed project will cause density/disturbance thresholds to be exceeded, to see whether siting opportunities exist within unsuitable or disturbed areas that would reduce density/disturbance effects.
  - c. When a habitat assessment is conducted it should create a baseline survey identifying:
    - i. Suitable and unsuitable habitat within the DDCT area
    - ii. Disturbed habitat within the DDCT area
    - iii. Sage-grouse use of suitable habitat (seasonal, densities, etc.)
    - iv. Priority restoration areas (which could reduce the 5% cap)
      - A. Areas where plug and abandon activities will eliminate disturbance
      - B. Areas where old reclamation has not produced suitable habitat
    - v. Areas of invasive species
    - vi. Other assurances in place (CCAA, easements, habitat, contracts, etc.)
- 4. Determination of existing and allowable suitable habitat disturbance: Acres of disturbance within suitable habitat divided by the total suitable habitat within the DDCT area times 100 equals the percent of disturbed suitable habitat within the DDCT area. Subtracting the percentage of existing disturbed suitable habitat from 5% equals new allowable suitable habitat disturbance until plant regeneration or reclamation reduces acres of disturbed habitat within the DDCT area.

**Permitting:** The complete analysis package developed by consultation and review outlined herein will be forwarded to the appropriate permitting agency. WGFD recommendations will be included, as will other recommendations from project proponents and other appropriate agencies. Project proponent shall have access to all information used in developing recommendations. Where possible and when requested by the project proponent, state agencies shall provide the project proponent with development alternatives other than those contained in the project proposal.

**Exempt Activities:** A list of exempt (“de minimus”) activities, including standard uses of the landscape is available in Attachment C.

#### GENERAL STIPULATIONS

These stipulations are designed to maintain existing suitable sage-grouse habitat by permitting development activities in core areas in a way that will not cause declines in sage-grouse populations. General stipulations are recommended to apply to all activities in core areas, with the exception of exempt (“de minimus”) actions defined herein (Attachment C) or specifically identified activities. The specific industry stipulations are considered in addition to the general stipulations.

- 1. **Surface Disturbance:** Surface disturbance will be limited to 5% of suitable sage-grouse habitat per an average of 640 acres. The DDCT process will be used to determine the

level of disturbance. Distribution of disturbance may be considered and approved on a case-by-case basis. Unsuitable habitat should be identified in a seasonal and landscape context, on a case-by-case basis, outside the 0.6 mile buffer around leks. This will incentivize proponents to locate projects in unsuitable habitat to avoid creating additional disturbance acres. Acres of development in unsuitable habitat are not considered disturbance acres. The primary focus should be on protection of suitable habitats and protecting from habitat fragmentation. See Appendix 1 for a description of suitable, unsuitable habitat and disturbance.

2. **Surface Occupancy:** Within 0.6 miles of the perimeter of occupied sage-grouse leks there will be no surface occupancy (NSO). NSO, as used in these recommendations, means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected. For example, underground utilities may be permissible if installation is completed outside applicable seasonal stipulation periods and significant resource damage does not occur. Similarly, geophysical exploration may be permissible in accordance with seasonal stipulations.
3. **Seasonal Use:** Activity (production and maintenance activity exempted) will be allowed from July 1 to March 14 outside of the 0.6 mile perimeter of a lek in core areas where breeding, nesting and early brood-rearing habitat is present. In areas used solely as winter concentration areas, exploration and development activity will be allowed March 14 to December 1. Activities in unsuitable habitat may also be approved year-round (including March 15 to June 30) on a case-by-case basis (except in specific areas where credible data shows calendar deviation). Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. While the bulk of winter habitat necessary to support core sage-grouse populations likely occurs inside Core Population Areas, seasonal stipulations (December 1 to March 14) should be considered in locations outside Core Population Areas where they have been identified as winter concentration areas necessary for supporting biologically significant numbers of sage-grouse nesting in Core Population Areas. All efforts should be made to minimize disturbance to mature sagebrush cover in identified winter concentration areas.
4. **Transportation:** Locate main roads used to transport production and/or waste products > 1.9 miles from the perimeter of occupied sage-grouse leks. Locate other roads used to provide facility site access and maintenance > 0.6 miles from the perimeter of occupied sage-grouse leks. Construct roads to minimum design standards needed for production activities.
5. **Overhead Lines:** Bury lines when possible, if not; locate overhead lines at least 0.6 miles from the perimeter of occupied sage-grouse leks. New lines should be raptor proofed if not buried.
6. **Noise:** New noise levels, at the perimeter of a lek, should not exceed 10 dBA above ambient noise (existing activity included) from 6:00 p.m. to 8:00 a.m. during the initiation of breeding (March 1 – May 15). Ambient noise levels should be determined by measurements taken at the perimeter of a lek at sunrise.
7. **Vegetation Removal:** Vegetation removal should be limited to the minimum disturbance required by the project. All topsoil stripping and vegetation removal in suitable habitat

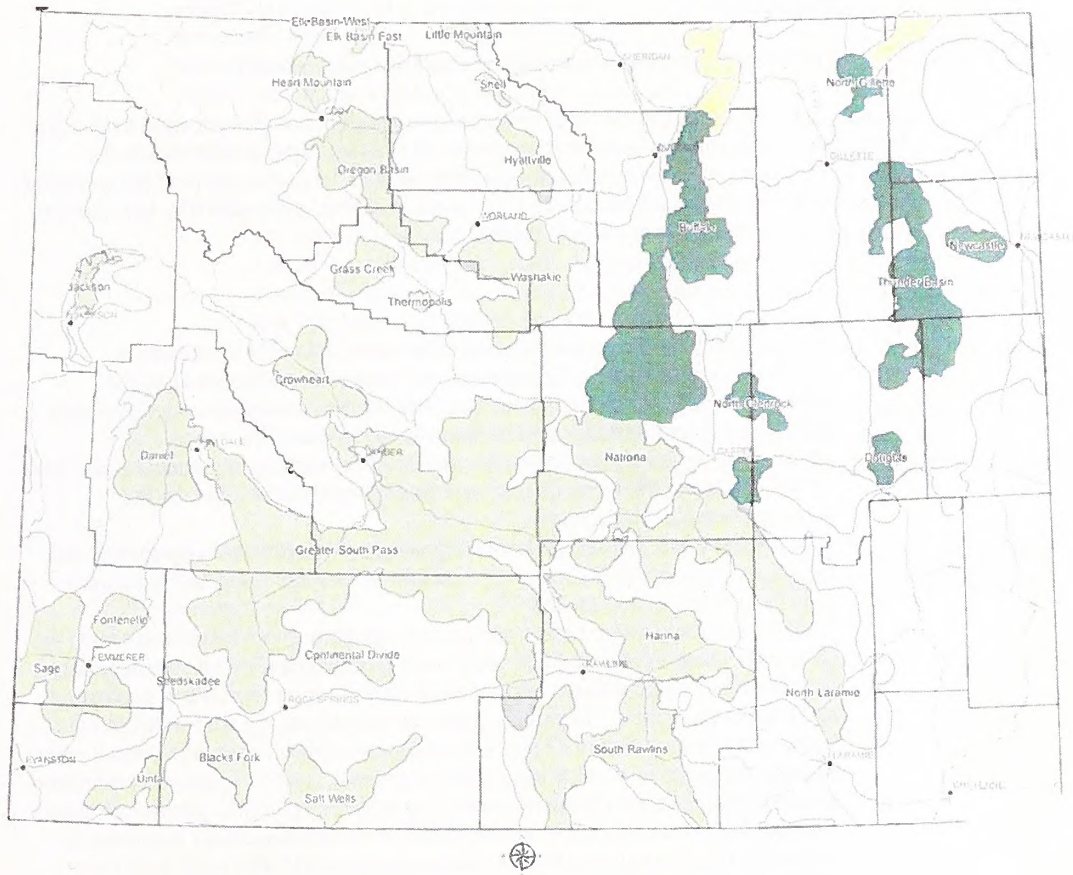


will occur between July 1 and March 14 in areas that are within 4 miles of an occupied lek. Initial disturbance in unsuitable habitat between March 15 and June 30 may be approved on a case-by-case basis.

8. **Sagebrush Treatment:** Sagebrush eradication is considered disturbance and will contribute to the 5% disturbance factor. Northeast Wyoming, as depicted in Figure 1, is of particular concern because sagebrush habitats rarely exceed 15% canopy cover and large acreages have already been converted from sagebrush to grassland or cropland. Absent some demonstration that the proposed treatment will not reduce canopy cover to less than 15% within the treated area, habitat treatments in northeast Wyoming (Figure 1) should not be conducted. In stands with less than 15% cover, treatment should be designed to maintain or improve sagebrush habitat. Sagebrush treatments that maintain sagebrush canopy cover at or above 15% total canopy cover within the treated acres will not be considered disturbance. Treatments that reduce sagebrush canopy cover below 15% will be allowed, excluding northeast Wyoming (Figure 1), if all such treated areas make up less than 20% of the suitable sagebrush habitat within the DDCT, and any point within the treated area is within 60 meters of sagebrush habitat with 10% or greater canopy cover. Treatments to enhance sagebrush/grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment.
9. **Monitoring/adaptive response:** Proponents of new projects are expected to coordinate with the permitting agency and local WGFD biologist to determine which leks need to be monitored and what data should be reported by the proponent. Certain permits may be exempted from monitoring activities pending permitting agency coordination. If declines in affected leks (using a three-year running average during any five year period relative to trends on reference leks) are determined to be caused by the project, the operator will propose adaptive management responses to increase the number of birds. If the operator cannot demonstrate a restoration of bird numbers to baseline levels (established by pre-disturbance surveys, reference surveys and taking into account regional and statewide trends) within three years, operations will cease until such numbers are achieved.
10. **Reclamation:** Reclamation should re-establish native grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage-grouse and replace or enhance sage-grouse habitat to the degree that environmental conditions allow. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Where sagebrush establishment is prescribed, establishment is defined as meeting the standard prescribed in the individual reclamation plan. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass. Rollover credit, if needed, will be outlined in the individual project reclamation plan.

Credit may be given for completion of habitat enhancements on bond released or other minimally functional habitat when detailed in a plan. These habitat enhancements may be used as credit for reclamation that is slow to establish in order to maintain the disturbance cap or to improve nearby sage-grouse habitat.

Figure 1. Wyoming Core Area with northeast Wyoming core (dark green) and connectivity areas (yellow).





11. **Existing Activities:** Areas already disturbed or approved for development within Core Areas prior to August 1, 2008 are not subject to new sage-grouse stipulations with the exception existing operations may not initiate activities resulting in new surface occupancy within 0.6 mile of the perimeter of a sage-grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance for existing activity and rollover credit may exceed 5%.
12. **Exceptions:** Any exceptions to these general or specific stipulations will be considered on a case by case basis and must show that the exception will not cause declines in sage-grouse populations.

**SPECIFIC STIPULATIONS (To be applied in addition to general stipulations)**

1. **Oil and Gas:** Well pad densities not to exceed an average of one pad per square mile (640 acres) and suitable habitat disturbed not to exceed 5% of suitable habitat within the DDCT. As an example, the number of well pads within a two mile radius of the perimeter of an occupied sage-grouse lek should not exceed 11, distributed preferably in a clumped pattern in one general direction from the lek.
2. **Mining**
  - a. For development drilling or ore body delineation drilled on tight centers, (approximately 100'X100') the disturbance area will be delineated by the external limits of the development area. Assuming a widely-spaced disturbance pattern, the actual footprint will be considered the disturbance area.
  - b. Monitoring results will be reported annually in the mine permit annual report and to WGFD. Pre-disturbance surveys will be conducted as required by the appropriate regulatory agency.
  - c. The number of active mining development areas (e.g., operating equipment and significant human activity) are not to exceed an average of one site per square mile (640 acres) within the DDCT.
  - d. Surface disturbance and surface occupancy stipulations will be waived within the Core Area when implementing underground mining practices that are necessary to protect the health, welfare, and safety of miners, mine employees, contractors and the general public. The mining practices include but are not limited to bore holes or shafts necessary to: 1) provide adequate oxygen to an underground mine; 2) supply inert gases or other substances to prevent, treat, or suppress combustion or mine fires; 3) inject mine roof stabilizing substances; and 4) remove methane from mining areas. Any surface disturbance or surface occupancy necessary to access the sites to implement these mining practices will also be exempt from any stipulation.
  - e. Coal mining operations will be allowed to continue under the regulatory and permit-specific terms and conditions authorized under the federal Surface Mining Control and Reclamation Act.
3. **Connectivity:**
  - a. The suspension of federal and state leases in connectivity corridors (Figure 1) is encouraged where there is mutual agreement by the leasing agency and the operator. These suspensions should be allowed until additional information

clarifies their need. Where suspensions cannot be accommodated, disturbance should be limited to no more than 5% (up to 32 acres) per 640 acres of suitable sage-grouse habitat within connectivity corridors.

- b. For protection of connectivity corridors (Figure 1), a controlled surface use (CSU) buffer of 0.6 miles around leks or their documented perimeters is required. In addition, a March 15 to June 30 timing limitation stipulation is required within nesting habitat within 4 miles of leks.
4. Process Deviation or Undefined Activities: Development proposals incorporating less restrictive stipulations or development that is not covered by these stipulations may be considered depending on site-specific circumstances and the proponent must have data demonstrating that the alternative development proposal will not cause declines in sage-grouse populations in the core area. Proposals to deviate from standard stipulations will be considered by a team including WGFD and the appropriate land management and permitting agencies, with input from the U.S. Fish and Wildlife Service. Project proponents need to demonstrate that the project development would meet at least one of the following conditions:
  - a. No suitable habitat is present in one contiguous block of land that includes at least a 0.6 mile buffer between the project area and suitable habitat;
  - b. No sage-grouse use occurs in one contiguous block of land that includes at least a 0.6 mile buffer between the project area and adjacent occupied habitat, as documented by total absence of sage-grouse droppings and an absence of sage-grouse activity for the previous ten years;
  - c. Provision of a development/mitigation plan that has been implemented and demonstrated by previous research not to cause declines in sage-grouse populations. The demonstration must be based on monitoring data collected and analyzed with accepted scientific based techniques.
5. Wind Energy Development: Wind development is not recommended in sage-grouse core areas, but will be reevaluated on a continuous basis as new science, information and data emerges.



## Appendix I Suitable Sage-Grouse Habitat Definition

Sage-grouse require somewhat different seasonal habitats distributed over large areas to complete their life cycle. All of these habitats consist of, are associated with, or are immediately adjacent to, sagebrush. If sage-grouse seasonal habitat use maps do not exist for the project site the following description of suitable habitat should be used to determine areas of unsuitable sage-grouse habitat for development siting purposes. An abbreviated description of a complex system cannot incorporate all aspects of, or exceptions to, what habitats a local sage-grouse population may or may not utilize.

**Suitable sage-grouse habitat** (nesting, breeding, brood-rearing, or winter) is within the mapped occupied range of sage-grouse, and:

- 1) has 5% or greater sagebrush canopy cover as measured by the technique developed by interagency efforts. "Sagebrush" includes all species and sub-species of the genus *Artemisia* except the mat-forming sub-shrub species: *frigida* (fringed) and *pedatifida* (birdfoot); or
- 2) is riparian, wet meadow (native or introduced) or areas of alfalfa or other suitable forbs (brood rearing habitat) within 60 meters of sagebrush habitat with 10% or greater canopy cover and the early brood rearing habitat does not exceed 20% of the suitable sagebrush habitat present within the DDCT. Larger riparian/wet meadow, and grass/forb producing areas may be considered suitable habitat as determined on a case by case basis.

**Transitional sage-grouse habitat** is land that has been treated or burned prior to 2011 resulting in <5% sagebrush cover but is actively managed to meet a minimum of 5% sagebrush canopy cover with associated grasses and forbs by 2021 (by analysis of local condition and trend) and may or may not be considered disturbed. Land that does not meet the above vegetation criteria by 2021 should be considered disturbed.

Land treatments post 2010 must meet sagebrush vegetation treatment guidelines or the treatment will be considered disturbed. Following wildfire, lands shall be treated as disturbed pending an implementation management plan with trend data showing the area returning to functional sage-grouse habitat.

To evaluate the 5% disturbance cap per average 640 acres using the DDCT, suitable habitat is considered disturbed when it is removed and unavailable for immediate sage-grouse use.

The following items are guidelines for determining suitable habitat:

- a. Long-term removal occurs when habitat is physically removed through activities that replace suitable habitat with long term occupancy of unsuitable habitat such as a road, well pad or active mine.
- b. Short-term removal occurs when vegetation is removed in small areas, but restored to suitable habitat within a few years of disturbance, such as a successfully reclaimed pipeline, or successfully reclaimed drill hole or pit.
- c. There may be additional suitable habitat considered disturbed between two or more long term (greater than 1 year) anthropogenic disturbance activities with a footprint greater than 10 acres each if the activities are located such that sage-grouse use of the suitable habitat between these activities is significantly reduced due to the close proximity (less than 1.2 miles apart, 0.6 miles from each activity) and resulting in cumulative effects of these large scale activities. Exemptions may be provided.

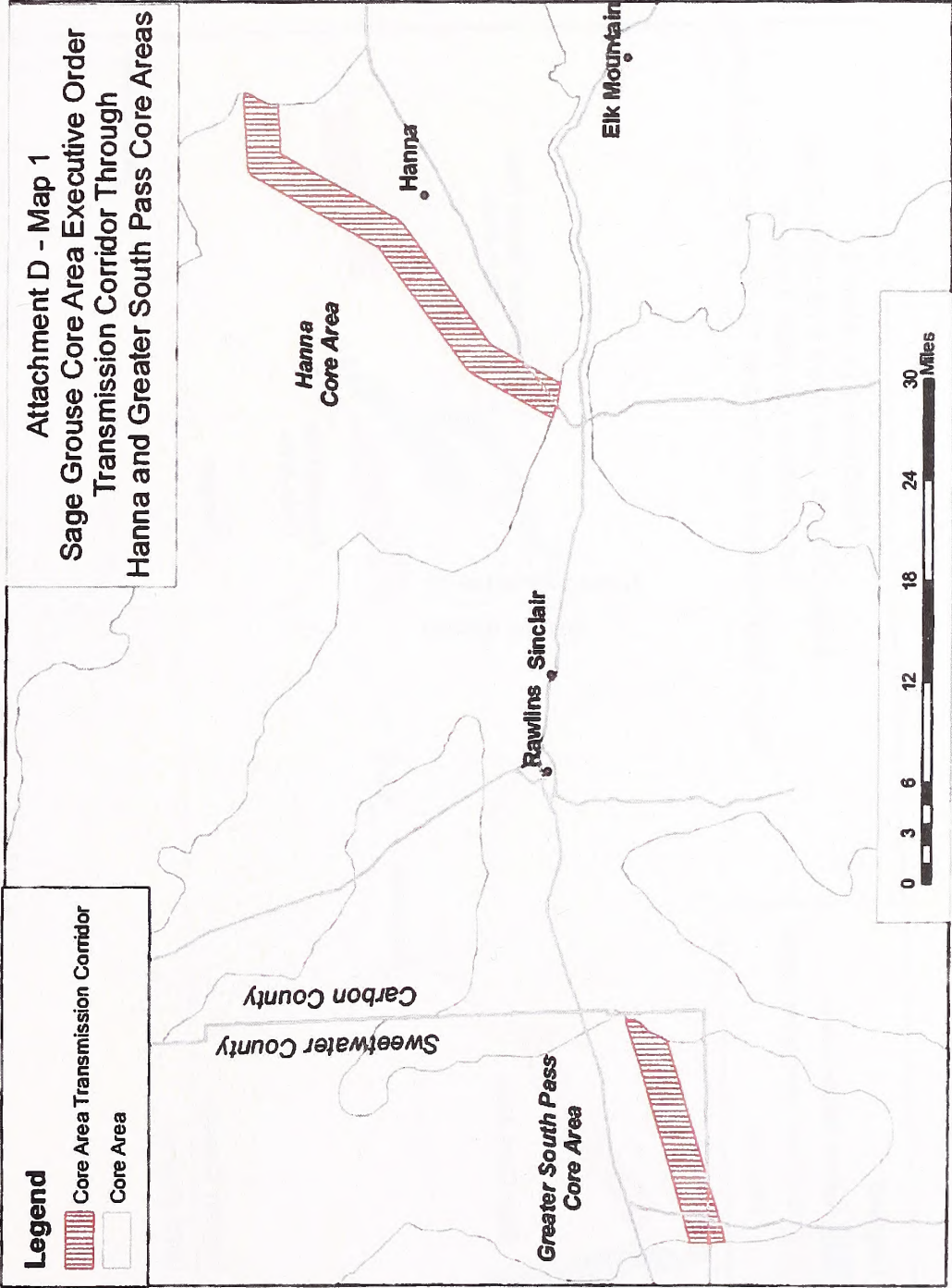
- d. Land in northeast Wyoming (Figure 1 of Attachment B) that has had sagebrush removed post-1994 (based on Orthophoto interpretation) and not recovered to suitable habitat will be considered disturbed when using the DDCT.



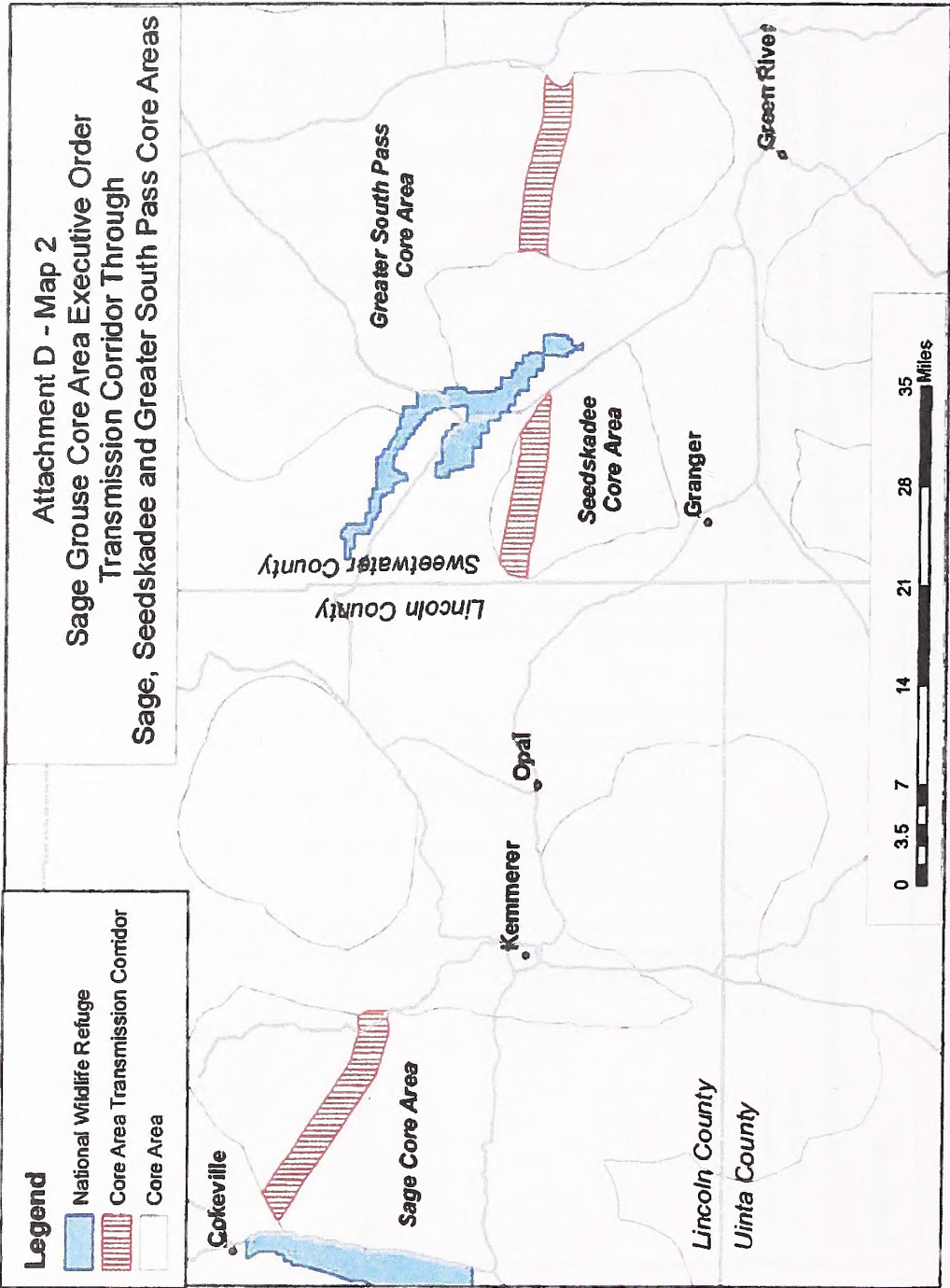
**ATTACHMENT C**  
**Exempt ("de minimus") Activities**

**Existing Land Uses and Landowner Activities in Greater Sage-Grouse Core Population  
Areas That Do Not Require State Agency Review for Consistency  
With Executive Order No. 2011-02**

1. Existing animal husbandry practices (including branding, docking, herding, trailing, etc).
2. Existing farming practices (excluding conversion of sagebrush/grassland to agricultural lands).
3. Existing grazing operations that utilize recognized rangeland management practices (allotment management plans, NRCS grazing plans, prescribed grazing plans, etc).
4. Construction of agricultural reservoirs and habitat improvements less than 10 surface acres and drilling of agriculture and residential water wells (including installation of tanks, water windmills and solar water pumps) more than 0.6 miles from the perimeter of the lek. Within 0.6 miles from leks no review is required if construction does not occur March 15 to June 30 and construction does not occur on the lek. All water tanks shall have escape ramps.
5. Agricultural and residential electrical distribution lines more than 0.6 miles from leks. Within 0.6 miles from leks no review is required if construction does not occur March 15 to June 30 and construction does not occur on the lek. Raptor perching deterrents shall be installed on all poles within 0.6 miles from leks.
6. Agricultural water pipelines if construction activities are more than 0.6 miles from leks. Within 0.6 miles from leks no review is required if construction does not occur March 15 to June 30 and construction is reclaimed.
7. New fencing more than 0.6 miles from leks and maintenance on existing fence. For new fencing within 0.6 miles of leks, fences with documented high potential for strikes should be marked.
8. Irrigation (excluding the conversion of sagebrush/grassland to new irrigated lands).
9. Spring development if the spring is protected with fencing and enough water remains at the site to provide mesic (wet) vegetation.
10. Herbicide use within existing road, pipeline and power line rights-of-way. Herbicides application using spot treatment. Grasshopper/Mormon cricket control following Reduced Agent-Area Treatments (RAATS) protocol.
11. Existing county road maintenance.
12. Cultural resource pedestrian surveys.
13. Emergency response.







**K.6 Instruction Memorandum 2012-044: BLM National Greater Sage Land Use Planning Strategy**



IM 2012-044, BLM National Greater Sage-Grouse Land Use Planning Strategy

U.S. DEPARTMENT OF THE INTERIOR **BUREAU OF LAND MANAGEMENT**  
NationalUNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240  
<http://www.blm.gov/>  
December 27, 2011In Reply Refer To:  
1110 (230/300) PEMS TRANSMISSION 12/27/2011  
Instruction Memorandum No. 2012-044  
Expires: 09/30/2013

To: All Field Officials

From: Director

Subject: BLM National Greater Sage-Grouse Land Use Planning Strategy

**Program Areas:** All Programs.

**Purpose:** This Instruction Memorandum (IM) provides direction to the Bureau of Land Management (BLM) for considering Greater Sage-Grouse conservation measures identified in the Sage-Grouse National Technical Team's - *A Report on National Greater Sage-Grouse Conservation Measures* (Attachment 1) during the land use planning process that is now underway in accordance with the 2011 *National Greater Sage-Grouse Planning Strategy* (Attachment 2).

This IM supplements direction for Greater Sage-Grouse contained in WO IM No. 2010-071 (*Gunnison and Greater Sage-Grouse Management Guidelines for Energy Development*), the BLM's 2004 *National Sage-Grouse Habitat Conservation Strategy* and is a component of the 2011 *National Greater Sage-Grouse Planning Strategy* (Attachment 2). It is also consistent with WO IM No. 2011-138 (*Sage-Grouse Conservation Related to Wildland Fire and Fuels Management*).

In March 2010, the U.S. Fish and Wildlife Service (FWS) published its decision on the petition to list the Greater Sage-Grouse as "Warranted but Precluded." 75 Fed. Reg. 13910 (March 23, 2010). Over 50 percent of the Greater Sage-Grouse habitat is located on BLM-managed lands. In its "warranted but precluded" listing decision, FWS concluded that existing regulatory mechanisms, defined as 'specific direction regarding sage-grouse habitat, conservation, or management' in the BLM's Land Use Plans (LUPs), were inadequate to protect the species. The FWS is scheduled to make a new listing decision in Fiscal Year (FY) 2015.

The BLM has 68 land use planning units which contain Greater Sage-Grouse habitat. Based on the identified threats to the Greater Sage-Grouse and the FWS timeline for making a listing decision on this species, the BLM needs to incorporate explicit objectives and desired habitat conditions, management actions, and area-wide use restrictions into LUPs by the end of FY 2014. The BLM's objective is to conserve sage-grouse and its habitat and potentially avoid an ESA listing.

In August 2011, the BLM convened the Sage-Grouse National Technical Team (NTT), which brought together resource specialists and scientists from the BLM, State Fish and Wildlife Agencies, the FWS, the Natural Resources Conservation Service (NRCS), and the U.S. Geological Survey (USGS). The NTT met in Denver, Colorado in August and September 2011, and in Phoenix, Arizona in December 2011, and developed a series of science-based conservation measures to be considered and analyzed through the land use planning process. This IM provides direction to the BLM on how to consider these conservation measures in the land use planning process.

In order to be effective in our ability to conserve Greater Sage-Grouse and their habitat, the BLM will continue to work with its partners including: the Western Association of Fish and Wildlife Agencies (WAFWA), FWS, USGS, NRCS, U.S. Forest Service (USFS), and Farm Services Agency (FSA) within the framework of the Sagebrush Memorandum of Understanding (2008) and the *Greater Sage-Grouse Comprehensive Conservation Strategy* (2006).

**Policy/Action:** The BLM must consider all applicable conservation measures when revising or amending its RMPs in Greater Sage Grouse habitat. The conservation measures developed by the NTT and contained



## IM 2012-044, BLM National Greater Sage-Grouse Land Use Planning Strategy

in Attachment 1 must be considered and analyzed, as appropriate, through the land use planning process by all BLM State and Field Offices that contain occupied Greater Sage-Grouse habitat. While these conservation measures are range-wide in scale, it is expected that at the regional and sub-regional planning scales there may be some adjustments of these conservation measures in order to address local ecological site variability. Regardless, these conservation measures must be subjected to a hard look analysis as part of the planning and NEPA processes. This means that a reasonable range of conservation measures must be considered in the land use planning alternatives. As appropriate, the conservation measures must be considered and incorporated into at least one alternative in the land use planning process. Records of Decision (ROD) are expected to be completed for all such plans by the end of FY 2014. This is necessary to ensure the BLM has adequate regulatory mechanisms in its land use plans for consideration by FWS as part of its anticipated 2015 listing decision.

When considering the conservation measures in Attachment 1 through the land use planning process, BLM offices should ensure that implementation of any of the measures is consistent with applicable statute and regulation. Where inconsistencies arise, BLM offices should consider the conservation measure(s) to the fullest extent consistent with such statute and regulation.

The NTT-developed conservation measures were derived from goals and objectives developed by the NTT and included in Attachment 1. These goals and objectives are a guiding philosophy that should inform the goals and objectives developed for individual land use plans. However, it is anticipated that individual plans may develop goals and objectives that differ and are specific to individual planning areas.

Through the land use planning process, the BLM will refine Preliminary Priority Habitat and Preliminary General Habitat data (defined below) to: (1) identify Priority Habitat and analyze actions within Priority Habitat Areas to conserve Greater Sage-Grouse habitat functionality, or where possible, improve habitat functionality, and (2) identify General Habitat Areas and analyze actions within General Habitat Areas that provide for major life history function (e.g., breeding, migration, or winter survival) in order to maintain genetic diversity needed for sustainable Greater Sage-Grouse populations. Any adjustments to the NTT recommended conservation measures at the local level are still expected to meet the criteria for Priority and General Habitat Areas.

**Preliminary Priority Habitat (PPH):** Areas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage-Grouse populations. These areas would include breeding, late brood-rearing, and winter concentration areas. These areas have been/are being identified by the BLM in coordination with respective state wildlife agencies.

**Preliminary General Habitat (PGH):** Areas of occupied seasonal or year-round habitat outside of priority habitat. These areas have been/are being identified by the BLM in coordination with respective state wildlife agencies.

PPH and PGH data and maps have been/are being developed by the BLM through a collaborative effort between the BLM and the respective state wildlife agency, and are stored at the National Operations Center (NOC). These science-based maps were developed using the best available data and may change as new information becomes available. Such changes would be science-based and coordinated with the state wildlife agencies so that the resulting delimitation of PPH and PGH provides for sustainable populations. In those instances where the BLM State Offices have not completed this delineation, the Breeding Bird Density maps developed by Doherty 2010[1] As LUPs are amended or revised, the BLM State Offices will be responsible for coordinating with the NOC to use the newest delineation of PPH and PGH. To access the PPH and PGH data, please use the following link: \\blm\dfs\loc\EGIS\OC\Wildlife\Transfers\GREATER\_SAGE\_GROUSE\_GIS\_DATA. will be used. The NOC will establish the process for updating files to include the latest PPH and PGH delineations for each state. This information will assist in applying the conservation measures identified in Attachment 1 below.

**Timeframe:** This IM is effective immediately and will remain in effect until LUPs are revised or amended by the end of FY 2014.

**Budget Impact:** This IM will result in additional costs for coordination, NEPA review, planning, implementation, and monitoring.

**Background:** Following a full status review in 2005, the FWS determined that the Greater Sage Grouse was "not warranted" for protection. Decision documents in support of that determination noted the need to continue and/or expand all efforts to conserve sage-grouse and their habitats. As a result of litigation challenging the 2005 determination, the FWS revisited the determination and concluded in March 2010 that the listing of the Greater Sage-Grouse is warranted but precluded by higher priority listing actions.

In November 2004, the BLM published the *National Sage-Grouse Habitat Conservation Strategy*. The BLM National Strategy emphasizes partnerships in conserving Greater Sage-Grouse habitat through consultation, cooperation, and communication with WAFWA, FWS, NRCS, USFS, USGS, state fish and wildlife agencies, local sage-grouse working groups, and various other public and private partners. In



IM 2012-044, BLM National Greater Sage-Grouse Land Use Planning Strategy

addition, the *Strategy* set goals and objectives, assembled guidance and resource materials, and provided comprehensive management direction for the BLM's contributions to the ongoing multi-state sage-grouse conservation effort.

In July 2011, the BLM announced its *National Greater Sage-Grouse Planning Strategy* (Attachment 2). The goal of the *Strategy* and this IM is to review existing regulatory mechanisms and to implement new or revised regulatory mechanisms through the land use planning process to conserve and restore the Greater Sage-Grouse and their habitat. The Gunnison Sage-Grouse, bi-state population in California and Nevada and the Washington State distinct population segments of the Greater Sage-Grouse will be addressed through other policies and planning efforts.

**Manual/Handbook Sections Affected:** None.

**Coordination:** This IM was coordinated with the office of National Landscape Conservation System and Community Partnership (WO-170), Assistant Director, Renewable Resources and Planning, (WO-200), Minerals and Realty Management (WO-300), Fire and Aviation (WO-400), BLM State Offices, FWS and state fish and wildlife agencies.

**Contact:** State Directors may direct questions or concerns to Edwin Roberson, Assistant Director, Renewable Resources and Planning (WO-200) at 202-208-4896 or [edwin\\_roberson@blm.gov](mailto:edwin_roberson@blm.gov); and Michael D. Nedd, Assistant Director, Minerals and Realty Management (WO-300) at 202-208-4201 or [mike\\_nedd@blm.gov](mailto:mike_nedd@blm.gov).

Signed by:  
Mike Pool  
Acting, Director

Authenticated by:  
Ambyr Fowler  
Division of IRM Governance, WO-560

2 Attachments:

- 1 - Sage-Grouse National Technical Team - *A Report on National Greater Sage-Grouse Conservation Measures*, December, 2011 (74 pp)
- 2 - 2011 BLM National Greater Sage-Grouse Planning Strategy (8 pp)

[1] Doherty, K. E., J.D. Tack, J.S. Evans and D. E. Naugle. 2010. Mapping breeding densities of greater sage-grouse: A tool for range-wide conservation planning. BLM Completion Report: Interagency Agreement # L10PG00911.

**K.7 Instruction Memorandum WY-2012-019 with Attachments: Greater Sage-Grouse  
Habitat Management Policy on Wyoming Bureau of Land Management (BLM)  
Administered Public Lands Including the Federal Mineral Estate**





## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82009-1828



IN REPLY REFER TO:  
6840 (930) P

February 10, 2012

EMS TRANSMISSION: 02/15/2012  
Instruction Memorandum No. WY-2012-019  
Expires: 9/30/2013

To: District Managers and Deputy State Directors

From: State Director

Subject: Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate

**Program Area:** All programs

**Purpose:** This Instruction Memorandum (IM) provides guidance to Bureau of Land Management Wyoming (BLM WY) Field Offices (FOs) regarding management consideration of Greater Sage-Grouse habitats for proposed activities until resource management planning updates are completed. This guidance is in place of direction provided in Washington Office (WO) IM No. 2012-043 concerning interim management policies and procedures for Greater Sage-Grouse. Specifically, this IM addresses all BLM WY programs and provides all necessary interim program direction consistent with WO IM No. 2012-043. Where planning efforts to update and incorporate this guidance are not yet completed, the BLM WY State Office will conduct periodic review of the implementation of measures and directives contained in this IM to determine their applicability and effectiveness and make changes as necessary. This IM replaces IM No. WY-2010-012 and IM No. WY-2010-013 (USDI BLM 2010a, USDI BLM 2010b). This IM also acknowledges that Wyoming BLM will be meeting the intent of WO IM-No. 2012-044, BLM National Greater Sage Grouse Land Use Planning Strategy.

**Policy/Action:** It is the policy of BLM WY to manage Greater Sage-Grouse seasonal habitats and maintain connectivity in identified areas in support of the population management objectives set by the State of Wyoming. This guidance is consistent with guidelines and recommendations

provided for in the Wyoming Governor's Sage-Grouse Implementation Team's Core Population Area Strategy and the most recent Wyoming Governor's Executive Order (EO) 2011-5. This IM is also consistent with the BLM National Sage-grouse Habitat Conservation Strategy (USDI BLM 2004a), WO policy guidance including:

- IM No. WO-2011-138 (Sage-Grouse Conservation Related to Wildland Fire and Fuels Management);
- IM No. WO-2010-071 (Gunnison and Greater Sage-Grouse Management Considerations for Energy Development);
- IM No. WO-2012-043 (Greater Sage-Grouse Interim Management Policies and Procedures);
- National BLM Policy Manual 6840 which provides direction for the management of BLM Sensitive Species; and
- IM NO. WO-2012-044, BLM National Greater Sage-Grouse Land Use Planning Strategy.

Because Washington Office IM No. WO-2012-043 references the terms Preliminary Priority Habitat (PPH) and Preliminary General Habitat (PGH), the following explanation of terms used in Wyoming to describe these areas is necessary. BLM WY will refer to PPH in this IM as "core" or "connectivity" areas because these areas currently correspond to the mapped boundaries of the State of Wyoming's Core Population Area Strategy and meet the instructed intent of WO guidance. Connectivity areas are not the same as core areas in Wyoming, but they are a high priority for management, as identified by the State (EO 2011-5; Figure 1). Additionally, the BLM WY, Buffalo Field Office (BFO) has identified sage-grouse "Focus Areas" for adaptive management direction during the Buffalo resource management plan revision process. A record of the management direction for these existing "focus areas" can be reviewed by visiting the following BLM WY BFO web-site:

([http://www.blm.gov/wy/st/en/field\\_offices/Bufalo/wildlife/sagegrouse.html](http://www.blm.gov/wy/st/en/field_offices/Bufalo/wildlife/sagegrouse.html)).

Finally, PGH in Wyoming corresponds to all Greater Sage-Grouse habitats not located within identified core, connectivity or focus areas.

This guidance is structured to utilize an adaptive management approach that effectively adopt the goals and objectives of the State's Sage-Grouse Core Protection Area Strategy regarding habitat conservation, restoration, and reclamation practices for Sage-Grouse habitats in Wyoming.

The IM policy guidance will be implemented in conjunction with existing program-specific policies and Best Management Practices (BMPs) such as, but not limited to, those contained in the fluid minerals program and the lands and realty program. It is the goal of BLM WY to continue to work toward the long-term conservation of Greater Sage-Grouse habitats in



Wyoming through coordination with partners, including the Governor's Office of the State of Wyoming, the Wyoming Game and Fish Department (WGFD) and the U.S. Fish and Wildlife Service (FWS), and to also utilize input from the Resource Advisory Council (RAC), Local Sage-Grouse Working Groups (LWGs), BLM cooperators and stakeholders through a process that includes the immediate implementation of the following measures and statements.

#### **Policy Statement 1: Habitat Mapping and Assessment**

The BLM WY State Office will, along with other involved partners, continue to support the development and use of the statewide sage-grouse seasonal habitat models. In addition, BLM WY will continue to support the development of genetic connectivity information and other tools appropriate and necessary to support BLM management decisions. It is anticipated that regionally-based, seasonal habitat models will be fully developed for nesting, early brood-rearing and winter habitat areas by 2013. BLM WY FOs are encouraged to work with the WGFD, using input from LWGs, researchers, industry, and other partners to identify, delineate, and manage important sage-grouse seasonal habitats and movement corridors even before the completion of these models. BLM WY will refer to core area maps located in the State's EO 2011-5. EO 2011-5 also includes clarified management prescriptions for the designated areas of non-core and connectivity areas. If, through the planning process, BLM proposes to adjust management strategy or boundaries of these areas from the State EO, all such adjustments must be coordinated with the State of Wyoming and other cooperators throughout the established NEPA and planning compliance processes.

The BLM WO has finalized the Sage-grouse Habitat Assessment Framework (HAF) as of August 2010, and instruction from the HAF must be considered when assessing the use of best tools for delineating relative abundance or quality of important seasonal sage-grouse habitats in core. Wyoming Sage-Grouse definitions are provided in Attachment 1 of this IM for reference and consideration of the following statements. Additionally, Attachment 2 provides habitat component descriptions for reference and consideration of the following statements.

#### **Policy Statement 2: Timing, Distance, Disturbance, and Density Restrictions**

Pending completion of ongoing land use planning revisions and amendments, BLM WY FOs must consider and evaluate the following sage-grouse habitat conservation measures related to timing, distance, disturbance, and density for proposed projects both within and outside of core areas as appropriate. FOs should, on a project-by-project basis, evaluate these and other project-specific habitat conservation measures within the context of the proposal and associated documentation of National Environmental Policy Act (NEPA) compliance.

With regard to timing limitations, the Governor's EO presents timing restrictions, as recommended by the Sage-Grouse Implementation Team (SGIT), of March 15 to June 30 for the protection of breeding activities (*i.e.*, lek, nesting, and early brood rearing) as well as the winter seasonal protections from November 1 to March 14 for Winter Concentration Areas (WCAs). At a minimum, the BLM will consider these recommended timing restrictions in core areas. Where local FOs have obtained credible data and information to support an additional 2 weeks of



protection preceding these recommended dates or subsequent to these dates, then BLM FOs may consider expanding the dates of restriction for the protection of sage-grouse breeding, early brood rearing, and winter concentration habitat areas. This instruction is consistent with the Wyoming Governor's EO (EO 2011-5; Attachment B; Statement 2).

The following sage-grouse habitat conservation measures, which FOs must consider and evaluate consistent with applicable laws, when considering proposed actions, are concentrated on providing direction for identified core and connectivity habitats and those areas of habitat outside these designations. For management prescriptions within WY BLM - BFO focus areas, refer to established management prescriptions for these areas that would be applied during the RMP revision process. The BFO is the only WY BLM FO that has, or will, identify sage-grouse focus areas.

#### **Timing and Distance:**

**Sage-grouse leks inside core/connectivity areas:** Surface occupancy and/or disruptive activities are prohibited on or within a six tenths (0.6) mile radius of the perimeter<sup>1</sup> of occupied<sup>2</sup> sage-grouse leks.

For the purposes of implementation of this policy, FOs must consider and evaluate an alternative that would not allow new surface facilities, including roads, to be authorized within a 0.6-mile buffer around occupied core or connectivity leks. Other actions may be consistent with the State's strategy when authorized (e.g., buried power and flowlines) with adherence to seasonal restrictions in nesting/early brood-rearing habitat and/or winter concentration areas, where the action(s) would not result in adverse impacts to core sage-grouse populations.

**Sage-grouse outside core/connectivity areas**<sup>3</sup>: Surface occupancy and/or disruptive activities are prohibited on or within a one-quarter (0.25) mile radius of the perimeter of occupied sage-grouse leks.

For the purposes of implementation of this policy, FOs must consider and evaluate an alternative that would not allow new surface facilities, including roads, to be authorized within a 0.25 mile buffer around occupied leks outside core or connectivity areas. Other actions may be consistent with the State's strategy when authorized (e.g., buried power and flowlines) with adherence to seasonal restrictions in nesting/early brood-rearing habitat

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<sup>1</sup> Mapping of lek perimeters is underway in cooperation with the WGFD. Field Offices are encouraged to continue to coordinate with WGFD to complete lek perimeter mapping. FOs must use lek perimeter data from WGFD if available, and until such time as the perimeter is mapped, use 0.6 miles from the center of the lek.

<sup>2</sup> Wyoming Sage-Grouse Definitions are in Attachment 1.

<sup>3</sup> Connectivity Areas as identified by SGIT recommendations and Wyoming Governor's EO 2011-5.



and/or winter concentration areas, where the action(s) would not result in adverse impacts to core sage-grouse populations.

**Sage-grouse nesting/early brood-rearing habitat in core areas:** Surface disturbing and/or disruptive activities are prohibited from March 15–June 30 to protect sage-grouse nesting and early brood rearing habitat. Apply this restriction to all nesting and early brood-rearing habitats inside core areas regardless of distance from the lek. Where credible data support different timeframes for this seasonal restriction, dates may be expanded by up to 14 days prior to or subsequent to the above dates.

**Sage-grouse nesting/early brood-rearing habitat in connectivity areas:** Surface disturbing and/or disruptive activities are prohibited from March 15–June 30 to protect nesting and early brood-rearing habitats within 4 miles of the lek or lek perimeter of any occupied sage-grouse lek within identified connectivity areas. Where credible data support different timeframes for this seasonal restriction, dates may be expanded by 14 days prior or subsequent to the above dates.

**Sage-grouse nesting/early brood-rearing habitat outside core or connectivity areas:** Surface disturbing and/or disruptive activities are prohibited from March 15–June 30 to protect sage-grouse nesting and early brood rearing habitats within 2 miles of the lek or lek perimeter of any occupied lek located outside core or connectivity areas. Where credible data support different timeframes for this restriction, dates may be expanded by 14 days prior or subsequent to the above dates.

**Sage-grouse late brood-rearing and Winter Concentration Areas (WCAs):** Surface disturbing and/or disruptive activities in sage-grouse WCAs are prohibited from December 1–March 14 to protect core populations of sage-grouse that use these winter concentration habitats. While the bulk of winter and late brood rearing habitat necessary to support core area populations is available within core population areas, it may be necessary to protect additional areas of winter concentration that are not located within the current core area boundaries. Appropriate seasonal timing restrictions and habitat protection measures must be considered and evaluated where WCAs or important late brood-rearing areas are identified as supporting populations of Greater Sage-Grouse that attend leks within core.

**Surface Disturbance and Disruptive Activities:**

Surface disturbing and disruptive activities are defined in the WY BLM Guidance for Use of Standardized Surface Use Definitions (WY IB 2007-029). For actions other than those taken for human health and safety, regulatory compliance or emergency, BLM FOs must determine if any activity proposed in sage-grouse nesting, brood-rearing or WCA habitat is “disruptive” by determining if the activity would require people and/or the structure or activity to be present in these habitats for a duration of more than 1 hour during any one 24 hour period during the applicable season in a site-specific area. Disruptive activity restrictions are not applicable to mandatory actions including those required to ensure compliance with existing permits, 43 CFR §3162.1(a) and 43 CFR §3162.5-1(a) and (c), or activities meeting any of the definitions of casual use as found in the Code of Federal Regulations.



**Density and Disturbance:****Inside Sage-Grouse Core Areas:**

For authorization of new proposed actions within sage-grouse core areas, including where there are valid existing rights, FOs must consider an alternative that would limit activities to an average of no more than one oil and gas and/or mining location per 640 acres and no more than 5 percent habitat disturbance (related to all programs or applicable sources of “disturbance” – see Disturbance Density Calculation Tool (DDCT) Manual within the core areas using the DDCT. Exempted activities not subject to the disturbance limits will not require use of the DDCT, but their associated disturbance will be captured (i.e., toward the 5 percent threshold) and will count toward the disturbance limits for non-exempted actions. Include results of the tool in the record when conducting site-specific or project-level documentation of National Environmental Policy Act (NEPA) compliance as appropriate.

The overall goal of the core area strategy as it relates to density and disturbance measures is to limit the fragmentation or loss of sagebrush habitats that support core populations. The BLM will consider and evaluate measures that limit or reduce the density of oil and gas or mining activities to no more than an average of 1 location per 640 acres; and to limit all surface disturbance (any program area) to no more than 5 percent of the core landscape using the DDCT. The consolidation and minimization of disruptive human influences and infrastructure is a basic strategy in limiting wildlife habitat fragmentation and habitat disturbance. The effort to consolidate or minimize fragmentation and disturbance must be considered regardless of whether proposed activities are located inside or outside of Sage-Grouse core or connectivity areas (see Attachment 3) and regardless of land ownership patterns.

**Inside Greater Sage-Grouse core areas the density and disturbance goals include:**

- The maintenance of sagebrush communities by maintaining or reducing the density of disturbance locations and disruptive activities on the landscape; or
- To not exceed an average of one oil and gas or mining location per 640 acres within the DDCT area identified using the DDCT, and total surface disturbance including existing disturbance and any proposed activity disturbance within the DDCT area should not exceed 5 percent disturbance of core sage-grouse habitats (See Policy Statement 4).

**Inside Greater Sage-Grouse connectivity areas the disturbance goals include:**

- To not exceed 5 percent habitat disturbance (up to 32 acres) per 640 acres using the DDCT process. For authorization of any proposed action within sage-grouse connectivity areas, including where there are valid existing rights, FOs must consider an alternative that would limit habitat disturbance to no more than 5 percent (up to 32 acres) per 640 acres of suitable sage-grouse habitat within connectivity areas in site-specific or project-level documentation of NEPA compliance.

The overall goal of the core population area strategy within connectivity areas is to minimize habitat loss within these areas sufficient to maintain high probability of lek persistence such that



conservation of population linkage for genetic transfer between sage-grouse populations in Wyoming and those within Montana and the Dakotas is achieved.

**Activities excepted by the State plan from the conductance of a DDCT calculation:**

Although the following land uses and land management practices must consider and evaluate provisions that support the goals of the core area strategy, including appropriate sage-grouse management protection and conservation measures (*i.e.*, seasonal timing, applicable spatial restrictions, etc.), they will not be subject to, nor require use of the DDCT in order to be consistent with this policy or the State's core population area strategy and EO.

- Herbicide use on or within existing well pads, roads, pipelines and powerline rights-of-way.
- Insecticide application using spot treatments for Grasshopper/Mormon cricket control or where aerial treatments follow accepted Reduced Agent-Area Treatments (RAATS) protocol and other common avoidance measures/protocols as appropriate and/or necessary.
- Existing public road maintenance activities (new roads and/or upgrading of existing roads will be subject to consideration of DDCT and results).
- Emergency response or actions specifically taken to avoid an emergency.
- Agricultural livestock reservoirs, water pipelines and protected spring developments.
- Fences (necessary construction and maintenance actions, seasonal restriction, relocation and/or marking of fences with high potential for strike mortality). Seasonal removals or adaptive modifications should be considered prior to any approval or construction of new fences in sage-grouse core area habitats.
- Cultural resource pedestrian surveys.
- All actions taken to comply with other existing statutes, regulations or terms of an existing permit.
- Actions taken to comply with new or existing livestock grazing authorizations.

**Exceptions to lease stipulations, Conditions of Approval (COAs), and terms and conditions (T&Cs), etc.** will continue to be considered on a case-by-case basis consistent with approved Resource Management Plans (RMPs) and other BLM policy and regulations as they relate to exceptions. Adequate pre-planning can reduce or eliminate the need for exceptions to sage-grouse protections or restrictions in many cases. When considering exceptions to timing, distance, disturbance and density restrictions applied to oil and gas activities, BLM WY FOs will coordinate with the WGFD in accordance with Appendix 5G of the Umbrella MOU (WGFD and USDI BLM 1990, as updated) and the coordination diagram for interactions between BLM WY and the WGFD specific to this IM (Attachment 4). All necessary timing, distance, disturbance and density restrictions will be considered across all FOs within appropriate NEPA compliance documentation for new projects under consideration. BLM WY FOs may vary somewhat in their application of these restrictions when that variance is based on locally collected scientific data and information, and such information is included in project-specific NEPA analysis (including analysis and rationale that support existing Records of Decision). Additionally, variance or determinations that do not apply the measures located in this policy IM may be necessary where BLM is required to comply with other non-discretionary statutes and regulations (*i.e.*, valid existing rights, oil and gas "drainage", etc.).



**Policy Statement 3: Conservation Objectives and Mitigation**

Through this policy IM, BLM WY will include site-specific, measurable conservation objectives for the management of core sage-grouse habitats are included in all new project NEPA documents (internal and external proposals). Documentation will include a discussion on the collection of baseline data and an outline for post-project monitoring that will be conducted if a proposal is ultimately approved. FOs are directed to coordinate with WGFD and to utilize LWG plans and other sources of information to guide development of additional conservation objectives for localized management of sage-grouse habitats. BLM WY FOs will work within multiple programs, such as the hazardous fuels, fire management, range, and wildlife programs, to accomplish sage-grouse habitat conservation objectives that would be consistent with the core population area management strategy.

BLM WY FOs will continue to work with project proponents, partners, and stakeholders to implement direct mitigation (e.g. relocating disturbance, timing and distance restrictions, etc.), utilize BMPs, and consider off-site compensatory mitigation as appropriate. Information sources to consider when identifying additional measures to reduce impacts include, but are not limited to, the BLM WY Mitigation Guidelines for Surface-Disturbing and Disruptive Activities (USDI BLM 1990) and the BLM Offsite Mitigation policy (USDI BLM 2008), and the National BLM Sage-Grouse Habitat Conservation Strategy (USDI BLM 2004). Reclamation of surface disturbance within Sage-Grouse core areas will include consideration of methods to assist in the restoration or augmentation of appropriate functional sage-grouse seasonal habitats. These measures will be in accordance with the BLM Wyoming Reclamation Policy (USDI BLM 2009b) and further guidance and information on these practices is anticipated in 2014 or earlier, with the signing of the RMP Amendments for Greater Sage-Grouse management. BLM WY will recognize the population management goals set by the WGFD when considering new or additional mitigation strategies throughout the NEPA process. The BLM's goal inside sage-grouse core areas is to maintain or enhance seasonal habitats thereby providing support for sage-grouse population management objectives of the State. Outside sage-grouse core areas, the BLM's goal is to sustain important habitats that support core populations and to maintain lek persistence over the long term in sufficient proportions of the sage-grouse population to facilitate movement and genetic transfer between core populations, including those found in adjacent States. Within sage-grouse connectivity habitats identified by the Governor's EO (2011-5), the BLM's goal is to maintain or enhance seasonal habitats in support of the connectivity population management objectives of the State.

This policy does not preclude the development and immediate implementation of new, or innovative mitigation, or other conservation measures that would also be expected to reduce activity/project impacts to sage-grouse or their habitats. New measures applied for sage-grouse will be coordinated as necessary with the WGFD. All recommendations, mitigation and conservation measures will be considered in site-specific documentation of NEPA compliance. As appropriate, these measures may be incorporated into COAs of permits, plans of development, and/or other use authorizations.



**Policy Statement 4: Project Locations and Analyses**

BLM WY regularly conducts wildlife habitat evaluations in response to applications and proposed activities in coordination with an interdisciplinary team. Evaluations involve a review of baseline data from office-based sources including, but not limited to, aerial photography, satellite imagery and sage-grouse demographic data which may refer to activities which pose potential threats to sage-grouse habitat. Evaluations typically include field visits to identify where impacts can be reduced by protecting seasonal habitats, especially leks, nesting, early brood-rearing, and WCAs. During these habitat evaluations, other vegetation communities not generally used by sage-grouse can be identified as potential sites in which to relocate certain projects with proposed surface disturbance or disruptive activity. In order to claim that the overall relocation results in having no substantive impacts on sage-grouse, the "patch" of non-habitat would need to be quite large and activities would have to be further than 0.6mi from the edge of suitable habitat. This same principle would apply in the case of timing restrictions/limitations. In any case, relocation into least sensitive habitats or vegetation types would still be appropriate. Sage-grouse habitat indicators that may be useful to consider when identifying conservation measures may include existing disturbance, habitat availability, patch size, currently approved or proposed fragmentation of existing habitats, patch connectivity, patch dynamics (*i.e.*, seral stages of vegetation), habitat edge characteristics and corridors potentially used for seasonal migration. The interdisciplinary team will consider and weigh potential impacts on other resources, such as cultural resources, soils and water to determine siting within the least environmentally sensitive area. In all cases, direct, indirect and cumulative impacts of proposed action on sage-grouse, other wildlife and all other impacted resources must be described regardless of distance from the project or whether inside or outside sage-grouse core areas.

**Disturbance Density Calculation Tool (DDCT) Review:**

For activity proposals within core areas, the effort to establish compliance with this IM and support of the State's strategy and EO will be to evaluate habitat disturbance (*i.e.*, percent of lost habitat within core) and then determine density of disruptive activities (oil and gas and mining locations) by using a quantitative disturbance and density calculation called the DDCT. The DDCT utilizes a GIS platform to conduct this review. Within the DDCT process, where habitat assessment information is comprehensive enough to measure, unsuitable habitats including those associated with disturbances occurring within the DDCT area may be excluded in the disturbance calculations as described in Attachment 5. Impacts and habitat evaluations under NEPA should continue to be analyzed and described for all populations to extend out to the distances and locations appropriate to the population which is likely to be affected. To conduct a project-level review of disturbance and density using the DDCT, there is a detailed, step-by-step DDCT Process Manual in Attachment 5 of this IM. Updates and additional information will be made available as the strategy is implemented and updates to the DDCT Manual are expected to occur over time.

The remaining portion of Policy Statement 4 addresses BLM WY program activities that may occur within sage-grouse seasonal habitats and have varying degrees of impact to the health and



connectivity of the sage-steppe communities therein. There is a focus on minimizing impacts and improving the health of sagebrush habitats for sage-grouse and other sagebrush obligates in core areas.

**Existing Activities:**

The State's strategy and this policy IM recognize and acknowledge that certain activities related to valid existing rights (oil and gas leases and mining operations), agricultural grazing activities and other existing activities will continue to occur within core areas. It is also acknowledged that existing operations and activities may have localized impacts on Greater Sage-Grouse. To offset these potential impacts, the mapping of core areas included more habitat than that which is strictly necessary for long-term conservation of the sage-grouse within the State of Wyoming (Wyoming EO 2011-5, provision No. 14). Consideration of existing activities (e.g., existing permits and developments already in place) will be expected to continue. Any expansion or new individual development proposals that require new BLM permits or decisions will remain a case-by-case determination of the BLM AO and conservation measures must be considered and evaluated before making new decisions.

**New Activity Proposals:**

The BLM's goal for any new activity or development proposal within core areas is to provide consistent support for population management objectives of the State. Activities would be consistent with the strategy where it can be sufficiently demonstrated that no declines to core populations would be expected as a result of the proposed action. Published research suggests that impacts to sage-grouse leks associated primarily with infrastructure and energy development are discernible at a distance of at least 4 miles and that many leks within this radius have been extirpated as a direct result of development (Walker et al. 2007, Walker 2008). Research also suggests that an evaluation of habitats and sage-grouse populations that attend leks within an 11-mile radius from the project boundary in the context of "large" projects may be appropriate in order to consider all seasonal habitats that may be affected for birds that use the habitats associated with the proposal during some portion of the life-cycle of seasonally migratory sage-grouse (Connelly et al. 2000).

Based on this information, the potential for direct and indirect impacts to sage-grouse within core areas shall be evaluated at minimum, out to 4 miles from relatively small individual proposed actions. Effects analyses may extend out 11 miles or more from the project boundary for large-scale projects depending on local knowledge and information regarding the site-specific population. The evaluation of "large" or "small" projects is not related to the disturbance density calculation or DDCT. This determination of size will be based on the distance at which an appropriate effects analysis under NEPA should be conducted unless pertinent data and information indicates a greater distance would be appropriate.

For the purpose of illustrating the implementation of the "large" or "small" determination within this policy statement, examples of relatively small actions may include but are not limited to, minor exploratory natural gas well drilling proposals, individual rights-of-way (including below ground linear projects), vegetation treatments conducted in accordance with the sagebrush treatment protocols (See Integrated Vegetation Management below, and Attachment 6 – WGFD



Protocols for Treating Sagebrush to be Consistent with Wyoming Executive Order 2011-5), wind energy site testing and sage-grouse monitoring projects. Examples of large-scale actions may include, but are not limited to, oil and gas field developments, wind energy farm/field development projects, large interstate transmission power lines and vegetation treatments that eliminate functional habitat for sage-grouse. In all cases, these distances are only a suggested distance for evaluation and project specific distances for evaluation can be modified based upon available data and information. Additionally, in the event that these measures are all adopted in a final proposal, this does not mean that the proposed activity would be automatically approved. BLM must evaluate proposed actions on a case-by-case basis while meeting its obligations under NEPA, FLPMA, and other applicable laws.

Noise:

BLM WY FOs will work with proponents to limit project related noise where it would be expected to reduce functionality of habitats that support core area populations. BLM will evaluate the potential for limitation of new noise sources on a case-by-case basis as appropriate. BLM's near-term goal is to continue to limit noise sources that would be expected to negatively impact core area sage-grouse populations and to continue to support the establishment of ambient baseline noise levels for occupied core area leks. As additional research and information emerges, specific new limitations appropriate to the type of projects being considered will be evaluated and appropriate limitations will be implemented where necessary to minimize potential for noise impacts on core sage-grouse population behavioral cycles.

**Integrated Vegetation Management**

For vegetation treatments in sagebrush within core areas, refer to Attachment 6 – WGFD Protocols for Treating Sagebrush to Benefit Sage-Grouse (WGFD 2011, as updated). These recommended protocols will be used in determining whether proposed treatment constitutes a “disturbance” that will contribute toward the 5 percent threshold for habitat maintenance or not. Additionally, these protocols will be used to determine whether the proposed treatment configuration would be expected to have neutral or beneficial impacts for core populations or if they represent additional habitat loss or fragmentation. Treatments to enhance sagebrush/grasslands habitat for sage-grouse will be evaluated based upon habitat quality and the functionality/use of treated habitats post-treatment.

BLM will work collaboratively with partners at the State and local level to maintain and enhance sage-grouse habitats in a manner consistent with the core population area strategy for conservation.

**Wildfire Emergency Stabilization (ES) and Burned Area Rehabilitation (BAR)**

BLM will work collaboratively with partners at the Federal, State, and local level to maintain and enhance sage-grouse habitats in a manner consistent with the core population area strategy for conservation. Conduct DDCT reviews in coordination with the WGFD - Habitat Protection Program located in Cheyenne at the WGFD headquarters. Areas within core are high priority for restoration of sage-grouse habitat beyond immediate response.



**Wildfire Suppression and Fuels Management**

Wildfire suppression efforts in core areas should be emphasized, recognizing that other local, regional, and national suppression priorities may take precedence. Public and firefighter safety remains the number one priority for all fire management activities. BLM WY will recognize and implement the measures found in WO IM No. 2011-138 (Sage-Grouse Conservation Related to Wildland Fire and Fuels Management), or successor guidance, regarding suppression operations and fuels management which is consistent with the State plan. For fuels management, BLM WY will consider multiple tools for fuels reduction in subject NEPA compliance documentation before electing to implement prescribed fire in sage-grouse core areas. Avoid the use of prescribed fire in areas of Wyoming big sagebrush and/or within areas of less than 12 inches of annual precipitation.

**Rights-of-Way (ROW), (e.g. Powerline Transmission, Wind Energy Projects)****Powerline Transmission:**

In conducting review of powerline transmission proposals, the use of the Framework for Sage-Grouse Impacts Analysis for Interstate Transmission Lines is necessary. The framework for analysis focuses on the evaluation of direct and indirect impacts to sage-grouse specific to large interstate transmission lines, as well as direct loss of birds that may occur and finally, mitigation (which includes the use of habitat equivalency analysis or HEA). Secondly, a DDCT will be required for all areas of core habitat that would be crossed by transmission if proposals or alternatives are identified outside the State's preferred corridors for transmission (see EO 2011-5; Statement 15; pg. 4). The results of the DDCT would be used to evaluate opportunities to: minimize density of disturbance within core areas that are outside the State's preferred disturbance corridor, as identified in the Wyoming Governor's Executive Order 2011-5; and to identify opportunities to restore and/or enhance important sage-grouse habitat as a part of project-related mitigation. The site-specific habitat evaluation of a DDCT will enable BLM to: (a) demonstrate compliance with the Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands including Federal Mineral Estate (IM WY-2012-019); and (b) demonstrate consistency with the Greater Sage-Grouse Core Area Protection, Wyoming Governor's Executive Order 2011-5 which requires use of designated corridors to traverse core areas. For clarity, the DDCT is not, by itself, an analysis of impacts from proposed transmission on BLM-administered properties for the purposes of NEPA and thus, BLM WY FOs are directed to observe the Framework for Sage-grouse Impacts Analysis for Interstate Transmission Lines.

**Wind Energy:**

It is the policy of BLM WY to consider, based on site specific analysis, deferral of approval of new applications and proposals for wind power development inside Greater Sage-Grouse core areas until the WY RMP updates have been finalized (*i.e.*, on-going RMP revision or on-going amendments for Greater Sage-Grouse management), unless it can be sufficiently demonstrated that the development activity would not result in declines of core sage-grouse populations. Sufficient demonstration of "no declines" should be coordinated with the WGFD and U.S. Fish and Wildlife Service. BLM WY will continue to contribute and support research and monitoring efforts to study the various environmental consequences of wind energy development on Greater Sage-Grouse or their habitats.



**Leasable Minerals:****Energy Development and Valid Existing Rights:**

Many sage-grouse seasonal habitats within and outside of core areas are encumbered by valid existing rights, such as mineral leases or existing rights-of-way. Fluid mineral leases often will include less stringent lease stipulations than the timing, distance, and density requirements identified for consideration in this policy. BLM WY FOs will work with project proponents in these situations to promote measurable sage-grouse conservation objectives such as but not limited to, consolidation of project related infrastructure to reduce habitat fragmentation and loss and to promote effective conservation of seasonal habitats and connectivity areas that support population management objectives set by the State. BLM WY FOs will continue to work with project proponents (including those from within the BLM) to site their projects in locations that meet the purpose and need for their project, but have been determined to contain the least sensitive habitats and resources whether inside or outside of core areas. Valid existing rights will be recognized and respected. In some cases, the goals of this strategy may not be met but, it remains the objective of the BLM to limit habitat loss and fragmentation within core areas.

**Solid Mineral Leases (Coal, Oil Shale and Non-energy):**

For all new coal and non-coal leasing applications, BLM will assess the potential impacts to sage-grouse through the NEPA process and as applicable identify mitigation to minimize habitat loss, fragmentation and direct and indirect effects to Greater Sage-Grouse and its habitat. The State regulatory agency would apply any BLM identified mitigation attached to the final lease document, as well as protective measures consistent with the State Policy for solid leasable minerals mining actions at the permitting stage. For solid non-energy leasable minerals, the BLM has regulatory authority to approve surface disturbing activities on Federal land only. In Wyoming, the State Department of Environmental Quality also has the regulatory authority to approve surface disturbing activities associated with Federal and non-Federal non-energy solid leasable mineral operations. Wyoming Department of Environmental Quality (DEQ) is the regulatory authority on non-Federal surface disturbing activities and is best suited to determine if development of a DDCT is required for permitting and may also impose restrictions that are not described for evaluation by BLM in this BLM WY policy IM.

**Fluid Mineral Leasing Screen**

In review of parcels nominated for lease of Federal fluid minerals in Wyoming, FOs are directed to utilize the following lease screen instruction.

**Evaluate all proposed lease parcels by answering the following questions (Sage-Grouse Lease Screen - Attachment 7):**

1. Is the parcel wholly or partially inside a Sage-Grouse Core Area? YES or NO?
  - If YES, then move to question 2.
  - If NO, then recommend the parcel or portion of parcel outside core, be offered for lease sale after attaching Lease Notice No. 3, Stipulation - Controlled Surface Use for Threatened, Endangered, and Sensitive Species, and also attach all other land-use plan derived stipulations, as appropriate.

\* Note that specialists must continue to use the most up to date GIS information and layers that reflect any changes in core areas or their boundaries.



2. Is the parcel part of at least eleven square miles of contiguous, manageable, Federal fluid mineral estate? YES or NO?

- If YES, then move to question 3A by referring the parcel to the State Office Reservoir Management Group (RMG) for preliminary review regarding potential drainage and/or whether the parcel is part of an oil and gas unit.
- If NO, then move to question 3B.

\* Note: This component of the screen will assist BLM in identifying opportunities where BLM can conserve large contiguous blocks of manageable, unleased habitats for Greater Sage-Grouse within core areas. Many factors will be considered in determining manageability such as land and mineral ownership patterns, lease or land ownership arrangement, expiration date of adjacent leases and any existing development capable of production or disturbances that would affect or influence habitat functionality. Include a review of any adjacent fee and State lands as practicable.

3.A. Did the BLM WY RMG identify the parcel as having any potential drainage issues, or is the parcel part of an oil and gas unit? YES or NO?

- If YES, then recommend the parcel or portions be offered for lease sale after attaching Lease Notice No. 3, Stipulation - Controlled Surface Use for Threatened, Endangered, and Sensitive Species, and also attach all other land-use plan derived stipulations, as appropriate.
- If NO, then recommend parcel for deferral.

\* Note: For all nominated parcels that meet all of the criteria, the FO may recommend deferral for sage-grouse habitat conservation. Deferred parcel areas will remain deferred from leasing until conservation planning and management potential can be evaluated in the context of a Land Use Planning action (*i.e.*, revision, maintenance, or amendment). This approach will ensure appropriate conservation measures and strategy can be effectively applied within core areas.

3.B. Is the parcel partially or entirely within 0.6-mi. of an occupied core area sage-grouse lek? YES or NO?

- If YES, move to question 4.
- If NO, then recommend that the parcel be offered for lease sale after attaching Lease Notice No. 3, Stipulation - Controlled Surface Use for Threatened, Endangered, and Sensitive Species, and also attach all other land-use plan derived stipulations, as appropriate.

4. Is parcel entirely within 0.6 mile? YES or NO?

- If YES, move to question 3A for review by RMG for potential drainage issues and possible deferral.
- If NO, then the parcel must be divided using geographic coordinate database (GCDB) aliquot parts to determine the approximately 40-acre portions of parcel touching or within the 0.6 mile buffer of the occupied lek.
  - a. For the portions entirely outside the 0.6mi lek buffer, recommend they be offered for lease sale after attaching Lease Notice No. 3, Stipulation - Controlled Surface Use for Threatened, Endangered, and Sensitive Species, and also attach all other land-use plan derived stipulations, as appropriate.



- b. For portions touching or within the 0.6 mile buffer of the lek, move to question 3A.

#### **Grazing Management:**

Properly managed livestock grazing activities and sage-grouse conservation are compatible. According to the U.S. FWS's March 2010 listing determination for Greater Sage-Grouse, the influence of livestock grazing on sage-grouse habitats varies across the range of the species. This variability of potential impacts is one factor used in determining the appropriate administrative level to prescribe proper livestock grazing management practices that would maintain or enhance localized habitat conditions for sage-grouse. It is the policy of BLM WY to promote proper livestock grazing management practices that maintain or enhance desired sage-grouse habitat conditions. In order to ensure the necessary implementation of these types of practices and protections, this policy IM directs FOs to implement the following practices for all on-going and proposed permits for livestock grazing authorizations and activities in the context of the Wyoming Governor's core population area strategy for Greater Sage-Grouse. These measures have been adapted from and are in conformance with WO IM 2012-043 for grazing management guidance.

#### **Ongoing Authorization Activities**

- If periods of drought occur, where appropriate, the AO will evaluate the season of use and stocking rate and adjust through coordination with grazing permittee/lessee and annual billings processes.
- Continue to coordinate with other Federal agencies, State agencies, and non-Federal partners. Leverage funding to implement habitat projects and implement the recent Memorandum of Understanding between the BLM, NRCS, FWS, and USFS maintain or enhance core habitats through grazing practices.
- Continue to prioritize oversight and effectiveness monitoring of grazing activities to ensure compliance with permit conditions and that progress is being made on achieving WY land health standards.
- Continue to evaluate existing range improvements (e.g., fences, watering facilities) associated with grazing management operations for impacts on Greater Sage-Grouse and its habitat.
- Livestock trailing that is authorized through crossing permits under Section 123 of H.R. 2055-228 and 43 CFR 4130.6-3 will include a trailing plan that is designed to avoid sensitive areas and/or time periods for sage-grouse. The plan will include specific routes and timeframes for trailing.

#### **Proposed Authorizations/Activities – Permit/Lease Renewal/Issuance**

- When several small or isolated allotments occur within a watershed or delineated geographic area, strive to evaluate all of the allotments together. Prioritize this larger geographic area against other core areas for processing permits/leases for renewal.
- Coordinate BMPs and vegetative objectives with NRCS for consistent application across jurisdictions where the BLM and NRCS have the greatest opportunities to benefit Greater Sage-Grouse, particularly as it applies to the NRCS's National Sage-Grouse Initiative (<http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/initiative/s/and/cid=steldevb1027671>).



- Evaluate opportunities to coordinate management plans and strategies on multiple allotments where coordination under a single management plan/strategy would result in enhancing Greater Sage-Grouse populations or its habitat as determined in coordination with the State wildlife agency.
- Where current livestock grazing management has been identified as a causal factor in not meeting Land Health Standards (43 CFR 4180), use the process in WO-IM-2009-007, Process for Evaluating Status of Land Health and Making Determinations of Causal Factors When WY Land Health Standards Are Not Achieved, to identify appropriate actions.
- Evaluate progress towards meeting standards that may affect Greater Sage-Grouse or its habitat prior to authorizing grazing on an allotment that was not achieving land health standards in the last renewal cycle, and livestock was a significant causal factor. Where available, use current monitoring data to identify any trends (e.g., progress) toward meeting the standards. Where monitoring data are not available or are inadequate to determine whether progress is being made toward achieving WY Land Health Standards, An interdisciplinary team should be deployed as practicable to conduct a new land health assessment in coordination with the grazing permittee/lessee. The NEPA analysis for the permit/lease renewal must address a range of reasonable alternatives including alternatives that maintain or enhance Greater Sage-Grouse habitat.
- If livestock grazing was the cause of not achieving land health standards that have potential to impact Greater Sage-Grouse or its habitat in the last permit renewal cycle, an interdisciplinary team should be deployed as practicable to conduct a new land health evaluation to determine if the allotment is making progress and if livestock grazing remains a causal factor.
- Plan and authorize livestock grazing and associated range improvement projects on BLM lands in a way that maintains and/or improves Greater Sage-Grouse and its habitat. Analyze through a reasonable range of alternatives any direct, indirect, and cumulative effects of grazing on Greater Sage-Grouse and its habitats through the NEPA process:
  - Incorporate available site information collected using the Sage-Grouse Habitat Assessment Framework and utilize these data when evaluating existing resource conditions and to develop any necessary resource solutions.
  - Incorporate management practices that will provide for maintenance and/or enhancement of sage-grouse habitats, including specific attention to maintenance of desired understories of sagebrush plant communities. When developing objectives for residual cover and species diversity, identify the ecological site(s) within the planning area and refer to the appropriate Ecological Site Description(s).
  - In determining appropriate management actions that will be considered, refer to the document, "Grazing Influence, Management, and Objective Development in Wyoming's Greater Sage-Grouse Habitat" (Cagney et al. 2010) for guidance. This peer reviewed document is the result of a collaborative effort in Wyoming to ensure proper livestock grazing practices with sage-grouse habitats. It is the culmination of efforts to gather and integrate current knowledge and practices regarding livestock grazing in respect to important sage-grouse habitats within Wyoming. The information and discussion materials found within this document



will provide resource professionals in BLM WY in planning livestock grazing strategies that meet the objectives of the Wyoming policy and strategy. Additional instruction for use and implementation of this document is described in Attachment 8 - Management of Livestock Grazing in Sage-Grouse Habitats on Lands Administered by the Bureau of Land Management in Wyoming.

- Evaluate and implement grazing practices that promote the growth and persistence of native shrubs, grasses, and forbs. Grazing practices include kind and numbers of livestock, distribution, seasons of use, and other livestock management practices needed to meet both livestock management and Greater Sage-Grouse habitat objectives.
- Evaluate the potential risk to Greater Sage-Grouse and its habitats from existing structural range improvements. Address potential for modification of those structural range improvements identified as posing a risk during the renewal process.
- Balance grazing between riparian habitats and upland habitats to promote the production and availability of beneficial forbs to Greater Sage-Grouse in meadows, mesic habitats, and riparian pastures for Greater Sage-Grouse use during nesting and brood-rearing while maintaining upland conditions and functions. Consider changes to season-of-use in riparian/wetland areas before or after the summer growing season.
- To ensure that the NEPA analysis for permit/lease renewal has a range of reasonable alternatives:
  - Include at least one alternative that would implement a deferred or rest-rotation grazing system, if one is not already in place and the size of the allotment warrants it.
  - Include a reasonable range of alternatives (e.g., no grazing or a significantly reduced grazing alternative, current grazing alternative, increased grazing alternative, etc.) to compare the impacts of livestock grazing on Greater Sage-Grouse habitat and land health from the proposed action.
  - If land treatments and/or range improvements are the primary action for achieving land health standards for Greater Sage-Grouse habitat maintenance or enhancement, clearly display the effects of such actions in the alternatives analyzed.

#### **Fence Construction:**

As stated above, fence proposals are subject to necessary provisions that support the goals of the core area strategy and consideration of necessary impact minimization and mitigation measures that avoid sage-grouse conflicts (*i.e.*, seasonal timing or spatial restriction, etc.). Evaluate the need for proposed fences, especially within 1.25 miles of occupied core area leks (Stephens 2010). Consider deferral of fence construction unless the objective is to maintain or enhance Greater Sage-Grouse habitats, maintain or enhance land health, promote successful reclamation, protect human health or safety or provide resource protection. Fence construction proposals will not require the development of a DDCT.

Where fence construction is authorized then, where appropriate, apply mitigation (e.g., timing limitations for construction/maintenance, proper siting outside scientifically supported buffer

zones, marking, or adjustment to post and pole construction of fences, etc.) to minimize or eliminate potential impacts to grouse, as determined in coordination with WGFD.

Consider and evaluate opportunities to modify or increase visibility of fences that are identified as posing a high risk of collision for sage-grouse. Prioritize evaluations of fences within 1.25 miles of occupied leks within core areas.

**Water Developments:**

See Policy Statement 7 below.

**Special Recreation Permits (SRP) and Recreation Sites:**

BLM will work collaboratively with partners at the Federal, State and local level to maintain and enhance sage-grouse habitats in a manner consistent with the core population area strategy for conservation. New proposals for SRPs or recreation site would be subject to “new activity proposals” as discussed above.

**Travel Management:**

For new road proposals, consider an alternative that would locate new primary and secondary roads greater than 1.9 mi from the perimeter of occupied sage-grouse leks inside core areas. Additionally, for new proposals, consider and evaluate an alternative that would locate new tertiary roads greater than 0.6 mile from the perimeter of occupied leks.

Construct new roads to a minimum design standard needed for proposed activity.

**Locatable Mineral Activities:**

Existing Notices and Approved Plans of Operations under 43 CFR 3809: For projects that overlap core areas, operators may be requested to submit modifications to the accepted notice or approved plan of operations so that the operations minimally impact core area habitats. The AO may convey to the operator suggested conservation measures, based upon the notice or plan level operations and the geographic area of those operations [also called the project area which is defined in CFR 3809.5]. These suggested conservation measures include measures that support the overall goals and objectives of the core population area strategy, though measures listed for evaluation in Policy Statement 2 of this IM may not be reasonable or applicable to the BLM’s determination of whether the proposed operations will cause unnecessary or undue degradation under 43 CFR 3809.5. The request containing the suggested conservation measures must make clear that the operator’s compliance is not mandatory.

Notices or Plans of Operation, or modifications thereto, submitted following the issuance of this guidance: As part of the 15 day completeness review of notices [or modifications thereto] and 30 day completeness review of plans of operations [or modifications thereto], the proposed project area(s) where exploration, development, mining, access and reclamation would take place should be reviewed for overlap of sage-grouse core areas in the corporate GIS database. If there is overlap, the BLM AO may notify the operator of ways that they may minimize impacts to core area habitats and request the operator to amend its notice or plan to include such measures. The request to amend the submitted notice or plan of operations must make clear that the operator’s



compliance is not mandatory and that including such measures is not a requirement for completeness of either the notice or a plan of operations, nor is it a condition of acceptance of the notice or approval of the plan of operations.

**Saleable Minerals:**

Where valid existing rights exist, work with permit holders to develop mutually agreeable actions such as siting/design of infrastructure or timing that will avoid or minimize effects to core populations and habitats.

For processing new permits, refer to “New Activity Proposals” above where consideration and evaluation of measures in Policy Statement 2 of this IM would be necessary.

**Grasshopper/Mormon Cricket Control and Management:**

FOs may implement treatments within sage-grouse core areas where outbreaks of grasshopper or Mormon cricket populations are expected to rise above economic levels. Treatments must be conducted only following reduced agent-area treatments (RAATS) protocols. BLM will work collaboratively with partners at the Federal, State, and local levels to maintain and enhance sage-grouse habitats in a manner consistent with the core population area strategy for conservation. FOs are directed to utilize <http://www.blm.gov/wy/st/en/info/NEPA/documents/ghopper.html> as a resource for updated information when conducting analysis of grasshopper and Mormon cricket control in sage-grouse habitats.

**Wild Horse and Burro Management:**

FOs will prioritize the management of wild horse populations in core areas to within established Appropriate Management Levels (AML). In accordance with National direction, wild horse herd management areas within the State’s core areas should be considered for priority removal of excess horses, except where removals are necessary in non-core population areas to prevent catastrophic environmental issues, including herd health impacts.

**Realty Actions – (e.g. Land Exchanges, Transfers, and Sales):**

BLM WY will consider, based on site specific analysis, deferring final action on public land disposals within core areas where such authorizations or approvals could result in a net loss of core sage-grouse habitat until the RMP amendments or revisions are completed. Evaluation of lands identified as suitable for disposal in current RMPs will be conducted through the RMP amendment or revision process.

**Vegetation and Resource Monitoring:**

See Policy Statements 3 and 9 for guidance and information regarding objectives and importance of monitoring.

**Policy Statement 5: Resource Management Plans (RMPs)**

For ongoing and future RMP revisions, follow Section 1.3.1 of BLM’s National Sage-Grouse Habitat Conservation Strategy (USDI BLM 2004a) as well as WO IM No. 2012-044, BLM

National Greater Sage-Grouse Land Use Planning Strategy, for sagebrush habitat conservation in BLM RMPs.

As WY BLM RMPs undergo revision, amendment, or modification, BLM FOs will identify any areas that would be considered under at least one alternative as unavailable for oil and gas leasing or wind energy development, ROW exclusions, etc., as appropriate. As part of this consideration FOs are encouraged to consider when existing leases are set to expire. BLM will also review the recommended management practices and sage-grouse conservation measures from section 1.4.1 of BLM's National Sage-Grouse Habitat Conservation Strategy (USDI BLM 2004a), the Wyoming Greater Sage-Grouse Conservation Plan, LWG plans and recommendations, peer reviewed research, and other available information, to the extent possible, for public lands and the Federal mineral estates.

Observe and analyze the objectives for maintenance and improvement of sage-grouse habitats that support population management objectives set by the State of Wyoming. The objectives and associated management practices will be designed to limit habitat loss, degradation, simplification, and fragmentation (US EPA 1993).

BLM WY FOs will develop plans addressing RMP objectives and to monitor sage-grouse habitats in order to assess effectiveness of conservation measures that will be applied in achieving the long-term conservation of sage-grouse habitats. All BLM authorized activities located in sage-grouse habitats will require appropriate sage-grouse conservation measures.

BLM WY RMP revisions and/or amendments will follow all applicable principles laid out in WO IM No. 2012-044 and analyze appropriate sage grouse habitat conservation regulatory mechanisms in at least one alternative of the RMP/EIS.

BLM WY RMP revisions and/or amendments will develop specific exception criteria for sage-grouse restrictions and application of greater or lesser restrictions for short or long-term activities. Exception, waiver, or modification evaluation factors may include, but are not limited to, localized population conditions, relative quality or condition of the habitat, presence/absence of sage-grouse or their sign, presence of other activities in the area, importance for migration or genetic connectivity, duration and timing of the proposed activity, local topography, severity and forecast of weather, beneficial aspects of the project for sage-grouse habitats, including possible reclamation activities, and cover or forage availability.

Consider landscape scale conservation strategies that may include special management of seasonal habitats and linkage zones. Use program-specific BMPs such as, but not limited to, temporary set-asides, phased development and/or off-site mitigation if offered by the proponent, sage-grouse habitat reclamation objectives, buried power lines, and other efforts that reduce or consolidate surface-disturbing and disruptive activities in these strategies.



**Policy Statement 6: Lek Data**

The official Wyoming sage-grouse lek database is maintained by the WGFD in accordance with Appendix 4B of the Umbrella Memorandum of Understanding (MOU) between the WGFD and BLM (WGFD and USDI BLM 1990).

Use of WGFD lek data in conducting DDCT review is required.

BLM WY FO specialists and local WGFD personnel will meet at least annually to locally coordinate and review the accuracy of data and incorporate the most up-to-date information as necessary. Scheduling of these annual coordination meetings is up to the individual FOs with their local WGFD counterparts. For data to be included in the WGFD database, it must be collected using techniques and accuracy standards agreed upon by WGFD and BLM. Annual lek surveys and lek counts will be coordinated between WGFD and the BLM to reduce duplicated efforts and minimize disturbance in accordance with the Umbrella MOU.

**Policy Statement 7: West Nile Virus**

Artificial water impoundments will be managed to the extent of BLM's authority for the prevention and/or spread of West Nile virus (WNV) where the virus poses a threat to sage-grouse. This may include but is not limited to: (a) the use of larvicides and adulticides to treat waterbodies; (b) overbuilding ponds to create non-vegetated, muddy shorelines; (c) building steep shorelines to reduce shallow water and emergent aquatic vegetation; (d) maintaining the water level below rooted vegetation; (e) avoiding flooding terrestrial vegetation in flat terrain or low lying areas; (f) constructing dams or impoundments that restrict seepage or overflow; (g) lining the channel where discharge water flows into the pond with crushed rock, or use a horizontal pipe to discharge inflow directly into existing open water; (h) lining the overflow spillway with crushed rock and construct the spillway with steep sides to preclude the accumulation of shallow water and vegetation; and (i) restricting access of ponds to livestock and wildlife (Doherty 2007).

Field Offices should consider alternate means to manage produced waters that could present additional vectors for WNV. Such remedies may include re-injection under an approved Underground Injection Control (UIC) permit, transfer to single/centralized facility, etc.

Policy Statement 7 regarding WNV does not apply to naturally occurring waters.

Impoundments for wildlife and/or livestock use should be designed to reduce the potential to produce vectors for WNV where the virus may pose a threat to sage-grouse.

**Policy Statement 8: Use of Dogs**

Based on current research and consultation of experts, BLM WY cannot consider any technique other than radio telemetry to be effective for detecting individual nesting sage-grouse. Field Offices are not to utilize or accept domestic dogs as the sole mechanism for conducting site

clearances for provision of exception for activities to occur within sage-grouse nesting habitat during the nesting season. BLM WY FOs are directed to carefully consider the impacts of disturbing sage-grouse during this crucial season and the potential for mortality of birds before approving any use of this methodology. Further, given the knowledge that detection of nesting grouse is so unlikely, BLM WY FOs must consider whether any exceptions to this important seasonal protection can be granted at all within the context of your own RMP's existing analysis of the criteria for exception. The use of well-trained dogs and experienced handlers for conducting clearances of winter concentration areas is permissible only when conducted with simultaneous verification of bird presence by visual observation of sage-grouse or their sign. This policy is in compliance with the WY BLM policy (USDI BLM 2009c) which does not allow employees to transport dogs in Government vehicles.

#### **Policy Statement 9: Monitoring Effectiveness**

It is extremely important that the directives contained in this IM are monitored to determine the effectiveness of their implementation until RMPs are updated. BLM WY FOs are to establish monitoring protocols that will be incorporated into individual project approvals as appropriate and necessary. Small or in-house projects within core areas will also have a monitoring plan for sage-grouse incorporated in the approval document.

#### **Policy Statement 10: Deviations from the Policy and Strategy**

This statewide policy is intended to provide consistent sage-grouse habitat management directives on BLM administered public lands including Federal mineral estate in Wyoming. Because Wyoming is a diverse State, there may be occasional circumstances which could justify deviation from the policies stated herein. FOs may vary in the implementation of this policy IM **where locally collected scientific data and information supported by comprehensive and objective NEPA analysis of a proposed action presents compelling justification for deviation.** In all cases, prior to actions where deviations from policy may take place, FOs will coordinate with WGFD counterparts and advise the Deputy State Director for Resources Policy and Management (WY 930) and the Deputy State Director for Minerals and Lands (WY 920) through the District Office of their intent to take such actions. The purpose of such notification and interaction is to ensure State Office awareness of the number and type of such actions, and not to request advance WY BLM State Office approval for such actions.

**Timeframe:** Effective immediately.

**Budget Impact:** There may be a significant effect on budgets.

#### **Background:**

In March 2010, the FWS published its finding on the petition for the Greater Sage-Grouse to be listed as Threatened or Endangered. The finding was that the species is "warranted, but precluded." The inadequacy of regulatory mechanisms was identified as one of the major factors in the FWS's finding on Greater Sage-Grouse. The FWS has identified the principal regulatory



mechanism for the BLM as protective measures embedded in land use plans. The BLM is identifying sage-grouse conservation measures for consideration through the planning process, with a target decision date of September 2014. The goal of the overall planning effort is to conserve and manage habitats necessary to sustain Greater Sage-Grouse populations and reduce the likelihood of listing under the Endangered Species Act.

In July 2011, the BLM announced the National Greater Sage-Grouse Planning Strategy which provides a framework for establishing adequate regulatory mechanisms (conservation measures) in applicable BLM LUPs throughout the range of the Greater Sage-Grouse. BLM WY will be working to incorporate the Wyoming Core Strategy into LUPs throughout the State and this IM will assist in preserving decision space that may be needed in the selection of potential alternatives.

**Manual or Handbook Sections Affected:** No manual or handbook sections are affected.

**Coordination:** This IM was coordinated among the BLM Washington D.C. Directorate, WY BLM Field Offices, other BLM State Offices, the Wyoming Office of Governor Mead and the Wyoming Game and Fish Department.

**Contacts:** Chris Keefe, Wildlife Biologist, 307-775-6101, and Buddy Green, Deputy State Director for Resources Policy and Management, 307-775-6113.

Signed By:  
Donald A. Simpson  
State Director

Authenticated By:  
Sherry Dixon  
Secretary

**9 Attachments:**

- 1 – Wyoming Sage-Grouse Definitions (4 pp)
- 2 – Seasonal Sage-grouse Habitat Component Descriptions (2 pp)
- 3 – Wyoming Core Areas Map ver. 3 (1 p)
- 4 – Coordination with Wyoming Game and Fish - Diagram (1 p)
- 5 – DDCT Process Manual (31 pp)
- 6 – Wyoming Game and Fish Department Protocols for Treating Sagebrush to be Consistent with Wyoming Executive Order 2011-5; Greater Sage-Grouse Core Area Protection (5 pp)
- 7 – BLM Wyoming Sage-Grouse Fluid Mineral Lease Screen (1 p)
- 8 – Management of Livestock Grazing in Sage-Grouse Habitats on Lands Administered by the Bureau of Land Management in Wyoming (4 pp)
- 9 – References (3 pp)

**Distribution**

Director (230), Room 204, LS  
CF

1 (w/o atchs)  
1(w/atchs)

## **ATTACHMENT 1**

### **Wyoming Sage-Grouse Definitions:**

(Updated 09/15/2011)

The following definitions have been adopted for the purposes of collecting and reporting sage-grouse data. See the sage-grouse chapter of the Wyoming Game and Fish Department's Handbook of Biological Techniques for additional technical details and methods.

**Lek** - A traditional courtship display area attended by male sage-grouse in or adjacent to sagebrush dominated habitat. A lek is designated based on observations of two or more male sage-grouse engaged in courtship displays. Before adding the suspected lek to the database, it must be confirmed by an additional observation made during the appropriate time of day, during the strutting season. Sign of strutting activity (tracks, droppings, feathers) can also be used to confirm a suspected lek. Sub-dominant males may display on itinerant (temporary) strutting areas during population peaks. Such areas usually fail to become established leks. Therefore, a site where small numbers of males (<5) are observed strutting should be confirmed active for two years before adding the site to the lek database.

**Satellite Lek** - A relatively small lek (usually less than 15 males) that develops within about 500 meters of a large lek during years of relatively high grouse numbers. Locations of satellite leks should be encompassed within lek perimeter boundaries. Birds counted on satellite leks should be added to those counted on the primary lek for reporting purposes.

**Lek Perimeter** - The outer perimeter of a lek and any associated satellites. Perimeters should be mapped by experienced observers using established protocols for all leks with larger leks receiving higher priority. Perimeters may vary over time as population levels or habitat and weather conditions change. However, changes to mapped perimeters should occur infrequently and only if grouse use consistently (2+ years) demonstrates the existing perimeter to be inaccurate. A point **within** the lek perimeter must be recorded or calculated as the identifying location for the lek. The point may be the geographic center of the perimeter polygon as calculated through a GIS exercise or a GPS point reflecting the center of breeding activity as typically witnessed on the lek.

**Lek Complex** - A lek or group of leks within 2.5 km (1.5 mi) of each other between which male sage-grouse may interchange from one day to the next.

**Lek Count** - A census technique that documents the actual number of male sage-grouse observed attending a lek complex. The following criteria are designed to assure counts are done consistently and accurately, enabling valid comparisons to be made among data sets. Additional technical criteria are available from the WGFD.

- i) Conduct lek counts at 7-10 day intervals over a 3-4 week period after the peak of mating activity. Although mating typically peaks in early April in Wyoming, the number of males counted on a lek is usually greatest in late April or early May when attendance by yearling males increases.
- ii) Conduct lek counts only from the ground. Aerial counts are not accurate and are not comparable to ground counts.
- iii) Conduct counts from ½ hour before sunrise to 1 hour after.
- iv) Count attendance at each lek a minimum of three times annually during the breeding season.



- v) Conduct counts only when wind speeds are less than 15 kph (~10 mph) and no precipitation is falling.
- All leks within a complex should be counted on the same morning.

**Lek Count Route** – A lek route is a census of a group of leks that are relatively close and represent part or all of a single breeding population/sub-population. Leks should be counted on routes to facilitate repetition by other observers, increase the likelihood of recording satellite leks, and account for shifts in breeding birds if they occur. Lek routes should be established so that all leks along the route can be counted within 1.5 hours following the criteria listed under “Lek Count.”

**Lek Survey** - Ideally, all sage-grouse leks would be counted annually. However, some breeding habitat is inaccessible during spring because of mud and snow, or the location of a lek is so remote it cannot be routinely counted. In other situations, topography or vegetation may prevent an accurate count from any vantage point. In addition, time and budget constraints often limit the number of leks that can be visited. Where lek counts are not feasible for any of these reasons, surveys are the only reliable means to monitor population trends. Lek surveys are designed principally to determine whether leks are active or inactive, requiring as few as one visit to a lek. Obtaining accurate counts of the numbers of males attending is not essential. Lek surveys involve substantially less effort and time than lek counts. They can also be done from a fixed-wing aircraft or helicopter. Lek surveys can be conducted from the initiation of strutting in early March until early-mid May, depending on the site and spring weather.

**Annual status** – Lek status is assessed annually based on the following definitions:

- **Active** – Any lek that has been attended by male sage-grouse during the strutting season. Acceptable documentation of grouse presence includes observation of birds using the site or signs of strutting activity.
- **Inactive** – Any lek where sufficient data suggests that there was no strutting activity throughout a strutting season. Absence of strutting grouse during a single visit is insufficient documentation to establish that a lek is inactive. This designation requires documentation of either: (1) an absence of birds on the lek during at least 2 ground surveys separated by at least 7 days. These surveys must be conducted under ideal conditions (April 1-May 7), no precipitation, light or no wind, ½ hour before to 1 hour after sunrise) or, (2) a ground check of the exact known lek site late in the strutting season (after April 15) that fails to find any sign (droppings/feathers) of strutting activity. Data collected by aerial surveys may not be used to designate inactive status.
- **Unknown** – Leks for which status as active or inactive has not been documented during the course of a strutting season. Except for those leks not scheduled for checks in a particular year, use of this status should be rare. Leks should be checked with enough visits to determine whether it is active or not. It is better to have two good checks every other year and confirm it "inactive" than to check it once every year, not see birds, but remain in “unknown” status.

**Management status** - Based on its annual status, a lek is assigned to one of the following categories for management purposes:

- **Occupied lek** – A lek that has been active during at least one strutting season within the prior ten years. Occupied leks are protected through prescribed management actions during surface disturbing activities.

- **Unoccupied lek** – There are two types of unoccupied leks, “destroyed” and “abandoned.” Unoccupied leks are not protected during surface disturbing activities.
- **Destroyed lek** – A formerly active lek site and surrounding sagebrush habitat that has been destroyed and is no longer suitable for sage-grouse breeding. A lek site that has been strip-mined, paved, converted to cropland or undergone other long-term habitat type conversion is considered destroyed. Destroyed leks are not monitored unless the site has been reclaimed to suitable sage-grouse habitat.
- **Abandoned lek** – A lek in otherwise suitable habitat that has not been active during a period of 10 consecutive years. To be designated abandoned, a lek must be “inactive” (see above criteria) in at least four non-consecutive strutting seasons spanning the ten years. The site of an “abandoned” lek should be surveyed at least once every ten years to determine whether it has been re-occupied by sage-grouse.
- **Undetermined lek** – Any lek that has not been documented active in the last ten years, but survey information is insufficient to designate the lek as unoccupied. Undetermined leks are not protected through prescribed management actions during surface disturbing activities until sufficient documentation is obtained to confirm the lek is occupied. Use of this status should be rare (see “unknown” above).

**Winter Concentration Area** - During winter, sage-grouse feed almost exclusively on sagebrush leaves and buds. Suitable winter habitat requires sagebrush above snow. Sage-grouse tend to select wintering sites where sagebrush is 10-14 inches above the snow. Sagebrush canopy cover utilized by sage-grouse above the snow may range from 10 to 30 percent. Foraging areas tend to be on flat to generally southwest facing slopes or on ridges where sagebrush height may be less than 10 inches but the snow is routinely blown clear by wind. When these conditions are met, sage-grouse typically gain weight over winter. In most cases winter is not considered limiting to sage-grouse. Under severe winter conditions grouse will often be restricted to tall stands of sagebrush often located on deeper soils in or near drainage basins. Under these conditions winter habitat may be limiting. On a landscape scale, winter habitats should allow sage-grouse access to sagebrush under all snow conditions.

Large numbers of sage-grouse have been documented to persistently use some specific areas which are characterized by the habitat features outlined above. These areas should be delineated as “winter concentration areas.” Winter concentration areas do not include all winter habitats used by sage-grouse, nor are they limited to narrowly defined “severe winter relief” habitats. Delineation of these concentration areas is based on determination of the presence of winter habitat characteristics confirmed by repeated observations and sign of large numbers of sage-grouse. The definition of “large” is dependent on whether the overall population is large or small. In core population areas frequent observations of groups of 50+ sage-grouse meet the definition while in marginal populations group size may be 25+. Consultation and coordination with the WGFD is required when delineating winter concentration areas.



*The following simplified definitions are derived from the Governor's EO 2011-5 and the WAFWA – Sage-Grouse Habitat Assessment Framework*

**Suitable Sage-Grouse Habitat (Wyoming Executive Order)** – is within the mapped occupied range of the species and maintains *greater than 5 percent canopy* sagebrush cover or sagebrush escape cover (i.e., >10% canopy) is within 60 meters of wet meadow, alfalfa or other suitable forbs areas. Areas below the 5 percent sagebrush canopy cover, and outside of the wet meadow example, would be considered “unsuitable” for greater sage-grouse.

**Suitable Habitat (Habitat Assessment Framework or HAF)** – is categorized in multiple quality-based descriptions, including marginal and suitable.

- Marginal habitats are described as maintaining 5 to 15 percent sagebrush canopy cover.
- Suitable habitats are described as maintaining 15 to 25 percent sagebrush canopy cover.

Where sagebrush canopy covers would be above or below these percentages, the habitat would be categorized as “unsuitable”.

*The following definitions are derived from the EPA habitat evaluation guidance (US EPA 1993):*

**Habitat Destruction (Loss/Conversion)** – The ultimate form of a habitat impact. The destruction of a natural ecosystem through its conversion to another land use. In each conversion, the original natural characteristics of the land are eliminated, while the associated habitat values are modified to varying degrees.

**Habitat Fragmentation (Breakdown Partitioning)** – A form of habitat impact which often only destroys part of a habitat, leaving other portions of the habitat intact. Depending on the scale of concern, many instances of local habitat destruction are better thought of as habitat fragmentation, or partitioning. Such fragmentation can be the principal cause of loss of “area-sensitive” species (e.g., grizzly bears, sage-grouse, etc.), and is the most serious threat to biological diversity.

## **ATTACHMENT 2**

### **SAGE-GROUSE SEASONAL HABITAT COMPONENT DESCRIPTIONS**

To effectively manage for sage-grouse and their habitat it is necessary to have a basic understanding of general sage-grouse biology and habitat needs.

The following seasonal use periods and habitat components are important to sage-grouse and contribute to their productivity and conservation. Breeding habitats have been identified as limiting factors in sage-grouse populations across their range. Winter habitats have been identified as a limiting factor in portions of their range when sage-grouse are unable to have access to sagebrush under a variety of snow conditions. The following habitat descriptions are a composite characterization of sage-grouse seasonal use areas found across Wyoming as presented in the Wyoming Sage-grouse Conservation Plan (WGFD 2003). These descriptions are most useful in providing an overall, contextual view of typical sage-grouse seasonal habitats in Wyoming, a State of very diverse ecosystems. Important sage-grouse seasonal habitats and use areas can vary from one part of the State to another. The regional sage-grouse plans prepared by the local sage-grouse working groups (LWG) provide a more specific description of the seasonal habitats and use areas for each region of the State.

The following are descriptions of breeding and winter habitat components which are based on definitions entitled "Wyoming Sage-grouse Definitions" developed and adopted by the WGFD, and others (Attachment 1).

#### **BREEDING HABITATS:**

Breeding habitats are composed of leks, nesting and early brood-rearing habitats.

**Leks** - A lek is typically an open area surrounded by potential nesting habitat. The common feature of leks is that they have less shrub and herbaceous cover than surrounding habitats. The sagebrush cover that surrounds a lek provides important hiding cover from predators for both the male sage-grouse and particularly hens while attending a lek. Sagebrush cover immediately adjacent to a lek may or may not meet the following definition of productive, high quality nesting habitat.

**Nesting/Early Brood-Rearing Habitat** - Nesting habitat for sage-grouse in Wyoming is generally described as sagebrush stands having canopy cover 15 to 30 percent and shrub heights of 11 to 32 inches (40-80 cm). Grasses and forbs with height (6 inches (15 cm) or greater) and shrub canopy cover (greater than 15 percent) provides important cover and food for sage-grouse using these habitats. Early brood-rearing habitat generally has 10 to 25 percent sagebrush canopy cover and has slightly higher canopy cover of grasses and forbs than nesting habitat. Early brood-rearing habitat is generally used by sage-grouse hens with chicks when the chicks range in age from newly hatched up to 21 days of age.

Research conducted on sage-grouse nesting activities range-wide has established that incubating hens normally leave the nest twice a day for 20 to 45 minutes during the early morning and late afternoon to feed (Holloran 2005). Activities or actions that cause hens to leave the nest more frequently or for longer periods increase the likelihood of nest failure. Studies since 1977 indicate that many populations of sage-grouse contained birds nesting much further than 2 miles from the lek of breeding. Studies conducted in Wyoming from 1994 to 2003 indicate 45 percent of sage-grouse hens



nest within 1.86 miles (3 km) of the lek, 64 percent nest within 3.1 miles (5 km), and 74 percent of nests are located within 4 miles (6.5 km) of the lek (Holloran and Anderson 2005, Holloran et al. 2007). Nest locations are independent of lek location, and are based on availability of suitable nesting habitat. Not all sagebrush habitats within these 2 to 4 mile radius distances may be suitable as nesting habitat or other seasonal habitats for sage-grouse.

#### **WINTER HABITAT:**

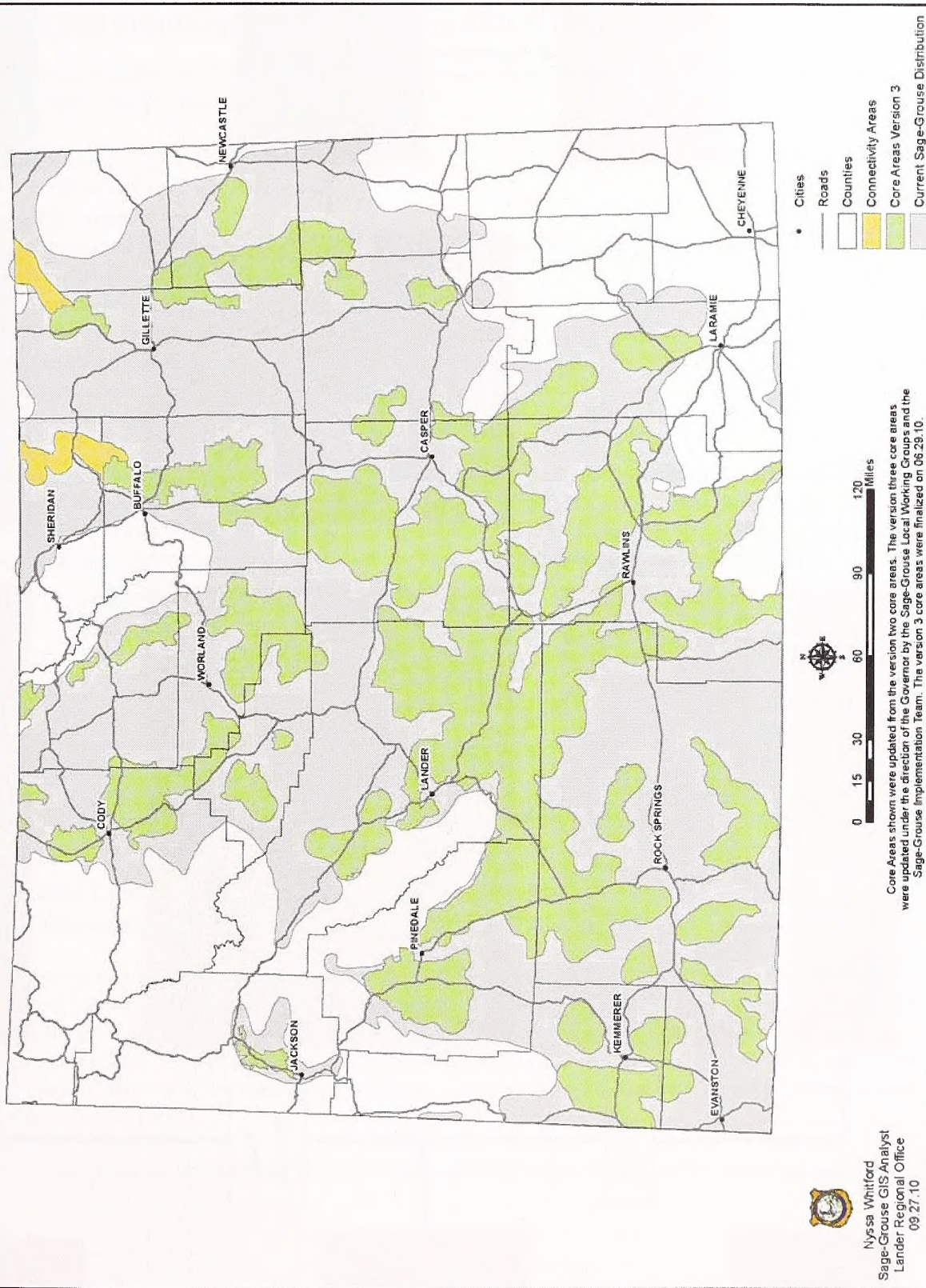
During winter, sage-grouse feed almost exclusively on sagebrush leaves and buds. Suitable winter habitat requires sagebrush above snow. Sage-grouse tend to select wintering sites where sagebrush is 10-14 inches (25 -36 cm) above the snow. Sagebrush canopy cover utilized by sage-grouse above the snow may range from 10 to 30 percent. Foraging areas tend to be on flat to generally southwest facing slopes or in areas where sagebrush height may be less than 10 inches (25 cm) but the snow is routinely blown clear by wind. When these conditions are met, sage-grouse typically gain weight over winter. In most cases, winter conditions are not considered limiting to sage-grouse in Wyoming. Under severe winter weather conditions sage-grouse will often be restricted to tall stands of sagebrush usually located on deeper soils in or near drainages. Under these severe winter conditions, winter habitat may be limiting. On a landscape scale, sage-grouse winter habitats should allow sage-grouse access to sagebrush under all snow conditions.

Large numbers of sage-grouse have been documented to consistently use some specific areas which are characterized by the habitat features outlined above. These areas are "winter concentration areas." Not all winter habitats used by sage-grouse, or "severe winter relief" habitats (a survival range), serve as winter concentration areas. Delineation of these concentration areas is based on determination of the presence of winter habitat characteristics confirmed by repeated observations and/or sign of large numbers of sage-grouse. The definition of "large" is dependent on whether the overall population is large or small. In core population areas frequent observations of groups of 50+ sage-grouse meet the definition, while in marginal populations group size may be 25.



Attachment 3

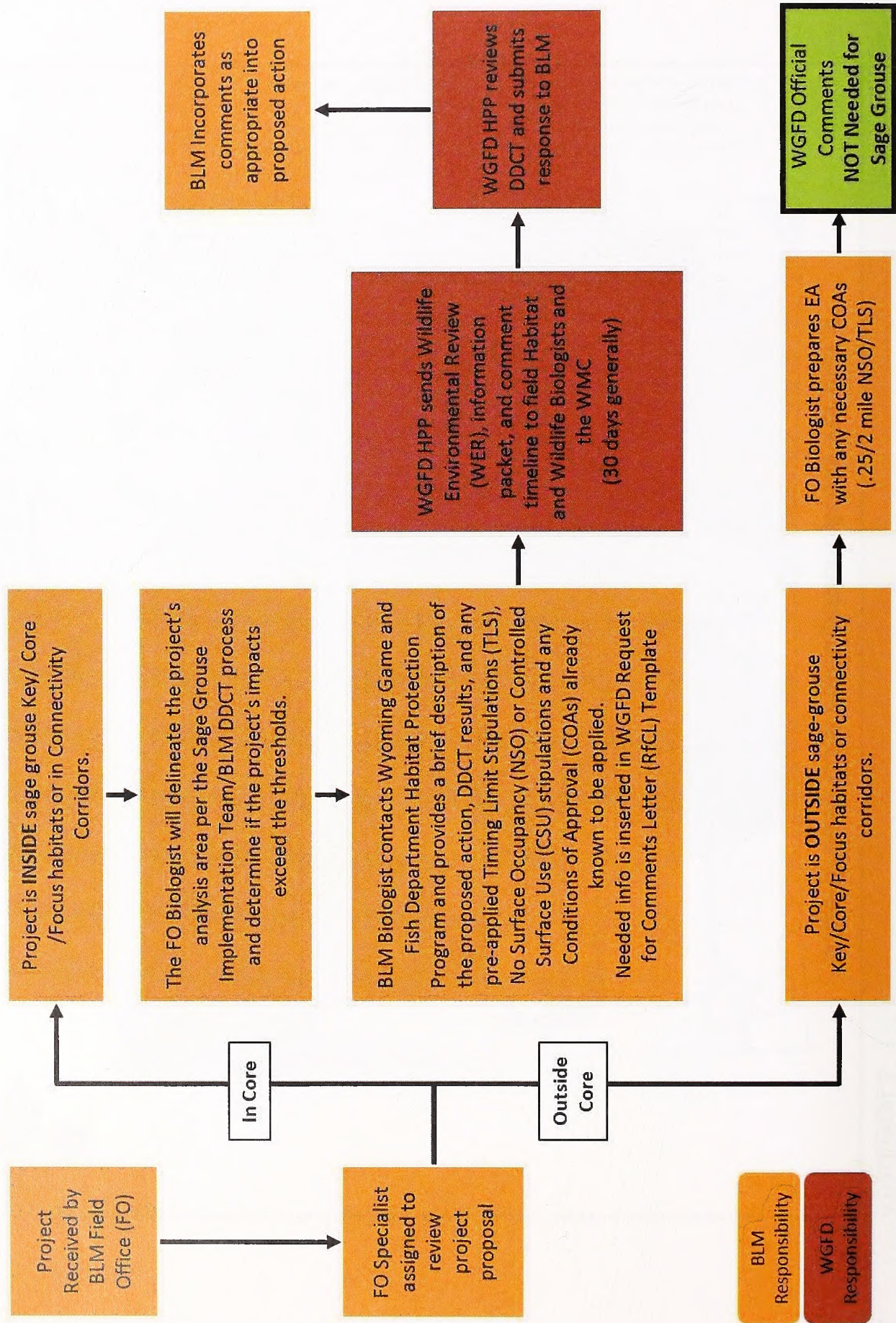
# Sage-Grouse Core Management Areas Version 3



Nyssa Whitford  
Sage-Grouse GIS Analyst  
Lander Regional Office  
09/27/10



**Attachment 4 -- BLM/WGFD Coordination Procedure for BLM IM No. WY 2012-012**





Attachment 5

Revised 7.13.11

Density and Disturbance Calculation Tool (DDCT) Manual

A DDCT will be completed for all applicable projects as outlined in the Sage-Grouse Executive Order 2011-5 (EO) occurring within sage-grouse core areas or connectivity areas.

This manual covers:

- What is a DDCT and why it is needed
- Data needed to run a DDCT
- How to run a DDCT step by step using the model developed by BLM, the preferred method\*
- How to report your results
- How to add the model to ArcToolbox
- How to delineate a DDCT step by step without the BLM model
- Density calculation process for linear features
- Anthropogenic disturbances
- How to handle pre 8.1.2008 units

This manual also contains additional information for projects not specifically addressed in the EO. The State of Wyoming and the BLM are using the DDCT process to evaluate and manage the total disturbance (existing, permitted, and proposed) within the State’s Sage-Grouse Core Areas (Version 3). The DDCT process will be conducted by federal land management agencies for proposals on federal land and by project proponents on State or private land.

TERM	Disturbance	Disruptive Activity
ALSO REFERRED TO AS	“surface or vegetation disturbance”	“anthropogenic disturbance activity”
	“direct habitat disturbance”	“indirect habitat disturbance”
EXECUTIVE ORDER LIMIT	5% of DDCT Area	Average of 1 per 640 acres within DDCT area
DDCT CALCULATION	disturbance calculation	density calculation

**What is a DDCT and why is it needed (See the Governor’s Sage-Grouse Executive Order 2011-5 [http://gf.state.wy.us/wildlife/wildlife\\_management/sagegrouse/Sage Grouse EO 2011 5.pdf](http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/Sage_Grouse_EO_2011_5.pdf))**

All activities will be evaluated within the context of maximum allowable disturbance (physically disturbed habitat percentages, location, and number of oil and gas and mining disruptions) of suitable sage-grouse habitat (See Appendix I for the definition of suitable sage-grouse habitat and disturbance of suitable sage-grouse habitat) within the area affected by the project. The maximum disturbance allowed will be analyzed via a Density/Disturbance Calculation Tool (DDCT) process conducted by the federal land management agency on federal land and the project proponent on non-federal (private, state) land.

1. Density/Disturbance Calculation Tool (DDCT) application: Determine all occupied leks within core population



## DDCT Process Manual

- areas that may be affected by the project by placing a four-mile boundary around the project boundary (as defined by the proposed area of physical disturbance related to the project). All occupied leks located within the four-mile boundary and within core population areas will be considered affected by the project.
2. A four-mile boundary will then be placed around the perimeter of each affected occupied lek. The core population area within the boundary of affected occupied leks and the four-mile boundary around the project boundary creates the DDCT area for each individual project. Disturbance will be analyzed for the DDCT area as a whole and for each individual affected occupied lek within the DDCT area. Any portion of the DDCT area occurring outside of core area will be removed from the analysis.
  3. If the DDCT includes mapped habitat that does not meet the suitable or transitional habitat definitions per the EO, the unsuitable (by definition not disturbance) will not be included in the DDCT calculation.
  4. If there are no occupied leks within the four-mile boundary around the project boundary, the DDCT area will be that portion of the four-mile project boundary within a core population area.

**Data needed to run a DDCT:**

Some of the data listed below will be available on the WGFD ftp site (<ftp://gf.state.wy.us/>) User name: ftp\_piaa and Password: piaa123). Please check the ftp site first or refer to the agency and/or web address for individual data sources.

Proposed surface disturbance or project boundary: This is the area that is being proposed for disturbance. This file must be a polygon file or a complete line file that can be converted into a polygon. The project proponent must provide this. To use the model provided by BLM add a Disrupt and a Disturb field to the attribute table of this file and populate the fields with a value of one. Examples of project boundaries and an altered attribute table are provided at the end of this document.

Most recent occupied leks/perimeter: Available from the Wyoming Game and Fish Department on the ftp\_piaa site. This file is a hybrid of occupied lek perimeters and occupied lek points, buffered by 5 feet. This was done to make sure that all occupied leks were represented by polygons.

Sage-Grouse Core Areas Version 3: Available from the Wyoming Game and Fish Department webpage and the ftp\_piaa site. ([http://gf.state.wy.us/wildlife/wildlife\\_management/sagegrouse/index.asp](http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/index.asp)).

Sage-Grouse Connectivity Areas: Available from the Wyoming Game and Fish Department webpage and the ftp\_piaa site. ([http://gf.state.wy.us/wildlife/wildlife\\_management/sagegrouse/index.asp](http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/index.asp)).

Land Ownership: The most recent land ownership file can be found on the Wyoming BLM website ([http://www.blm.gov/wy/st/en/resources/public\\_room/gis/datagis.html](http://www.blm.gov/wy/st/en/resources/public_room/gis/datagis.html)) under the PLSS/Ownership heading.

NAIP (National Agricultural Imagery Program) imagery: Used for detecting additional disturbance. True Color images are available in seamless statewide coverage from the following ArcGIS Server site: <http://gis.apfo.usda.gov/arcgis/services>.

To install this ArcServer click the add data button>from the look in menu navigate to GIS Server (toward the bottom)>Add ArcGIS Server> use GIS Services>Next>Enter <http://gis.apfo.usda.gov/arcgis/services> in to the internet server box> Finish.

## DDCT Process Manual

To use the images from the above server click the add data button >navigate to GIS Servers> arcgis on [gis.apfo.usda.gov](http://gis.apfo.usda.gov)>NAIP>Wyoming\_2009\_1m\_NC

**Current surface disturbance file:** To use the model provided by BLM, download the blank surface disturbance geodatabase (SurfDist.gdb) and digitize, or load, all current surface disturbances within this geodatabase. Make sure to populate all Disrupt and Disturb cells with a value of 1. These fields are used to calculate the 5% threshold (Disturb) and the 1 average disruption per 640 acres (Disrupt). If a disturbance is determined not to be a disruption then the value can be changed to zero and it will not be counted in the 1 average disruption per 640 acres count. Also, DO NOT rename the SurfDist.gdb or the SurfaceDist feature class within the geodatabase. The model will not run if either of these files are renamed. Some of this data will have to be head's up digitized at a minimum 1:5000 scale from the 2009 NAIP aerial photography images.

Surface disturbance includes but is not limited to roads, well pads, mining operations, cropland, buildings, some vegetation treatments, wind turbines, and pipelines. Remember to clip all disturbances to the final DDCT boundary. To use the model provided by BLM all surface disturbance will have to be within the SurfDist geodatabase. Visual examples of disturbances and the SurfDist attribute table are provided at the end of this document.

**Other useful files may include but are not limited to:**

Note: Surface disturbance digitized by BLM accounts for all surface disturbances. It may be necessary to examine this file and change the Disturb field value to 0 on features that would not be applicable in the DDCT (e.g. alfalfa field used by grouse, successfully reclaimed development). Surface disturbances must be anthropogenic in nature, except for wildfire not meeting transitional standards, to count toward the disturbance calculations.

**Roads:** Capture any road greater than or equal to 10ft wide that does not have a noticeable strip of vegetation down the middle. Roads less than 10ft wide that are clearly discernable as improved should also be captured. The Wyoming Department of Transportation (WYDOT) has a good road file for maintained roads. This file will help to identify where some of the roads are located in the DDCT. Smaller or new roads may still have to be digitized. The WYDOT file can be used to buffer state highways by 34ft, county roads by 28ft, and interstates by 38ft each direction. This file is updated annually and can be downloaded from the WYGISC website (<http://www.uwyo.edu/wygisc/data/index.html>). The most accurate way to capture the footprint of the road disturbance is to digitize it. BLM offices are also a good source of road data.

**Oil and Gas Wells:** The current well file can be obtained from the Wyoming Oil and Gas Conservation Commission (WOGCC) website (<http://wogcc.state.wy.us>). Once on the WOGCC webpage click Down Load. Scroll to the bottom of the list, select the Well Header file and click the bucking bronco icon to the left to start downloading. The "WH" file is comprised of active wells and the "PA" file is comprised of plugged and abandoned wells. WOGCC also has an ArcIMS Server site that can be installed similar to the NAIP site, see above. The address for that server is <http://wogccms.statewy.us>. Clip the wells to the DDCT boundary and digitize each well pad to determine the area disturbed.



## DDCT Process Manual

Oil and Gas Unit Boundaries: The most current oil and gas unit file can be viewed from the WOGCC website (<http://wogccms.state.wy.us>). This web address can also be used in ArcMap to add an ArcIMS Server site. This file is updated quarterly. Please see the Additional Information section for more information on units.

Mining: Use the mining plan permit boundaries to digitize actual mining disturbance off the NAIP imagery. Mining files can be downloaded from the DEQ website (<http://deq.state.wy.us/lqd>). Scroll down the page to the CHIA - Cumulative Hydrologic Impact Assessments heading. These files are updated annually, usually in February. For questions or concerns please contact Chad Kopplin with DEQ (307.777.6470 or [ckoppl@wyo.gov](mailto:ckoppl@wyo.gov)).

Cropland: Digitize all cropland. If the cropland is determined to be sage grouse habitat it can be coded as 0 in the SurfDist.gdb file.

Buildings: This also includes ranches and developed subdivisions. If there is disturbance around dwellings that would prohibit all sage-grouse use then digitize the entire disturbance. If the building is only used intermittently digitize the actual building footprint.

Vegetation Treatments: Contact WGFD or the land management agency to determine if vegetation treatment data are available for defined transitional habitat (EO Appendix I).

Transmission Lines: Digitize the Right-Of-Way (ROW) for the transmission lines. Overhead transmission line corridors (115kV and new corridors as described in the EO) are not to be included in density calculations but will be considered for disturbance calculations (ROW width X length).

Pipelines: Digitize the disturbance of the pipeline scar. Pipelines regardless of width/distance are not to be considered toward the density calculations. Pipelines will contribute towards the disturbance calculation until the area is successfully reclaimed (EO) .

Suitable Sage Grouse Habitat : All acreage within core areas are considered suitable habitat unless the habitat within the DDCT has been mapped per the EO standards.

**Additional Information:**

Anthropogenic Disturbances: The average of 1 per 640 acres threshold applies only to oil and gas and mining activities.

Disturbance Calculation Process for Linear Features: The impacts of linear disturbances are varied. The following are suggestions for dealing with linear features:

1. Non-2 track roads would contribute towards disturbance calculations. The actual footprint should be digitized.
2. Overhead transmission line corridors (115kV and new corridors as described in the EO) would contribute towards disturbance calculations (ROW width X Length).
3. Pipelines regardless of width/distance would contribute towards the disturbance calculation until the area is reclaimed with perennial grasses and forbs.

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Units (prior to 8.1.2008) located within a new project DDCT: When dealing with situations where the DDCT encounters a prior to 8.1.2008 unit, the BLM field manager will need to work collaboratively with both the unit holders and the project proponents to determine the actual disturbance necessary to successfully meet the project goals of both. It is imperative that each of these situations are addressed with flexibility and a solid understanding of the local landscape:

1. **New Development inside Units:** The key to planning development in units within core areas is to create the least amount of disturbance to suitable habitat. A unit is not automatically considered an approved activity; however, there is an expectation that development of the unit will occur. Each situation will need to be handled case-by-case and information such as development plans and reservoir characteristics will play into the BLM's decision on how to manage density and disturbance. In many cases this will best be accomplished by concentrating activity within existing (prior to 8.1.2008) unit boundaries. Disturbance and density calculations may exceed the thresholds for a DDCT because development is being concentrated in a pre 8.1.2008 unit.
2. **New Development outside Units:** Within existing (prior to 8.1.2008) recognized federal oil and gas units, drilling and spacing units, and other recognized developments, coordination will be a key element for the BLM, the existing unit holder, and any new project proponent inside or outside the unit. A unit will often have an approved plan of development that contemplates a shorter time period than the life of the project, so available information may only show a portion of the entire development. When projects outside the unit may cause the disturbance/disruption thresholds to be exceeded, the unit holder will need to share their full plan development with the BLM. For those circumstances where a full plan of development may never reach levels anticipated at the outset of the project it is important to determine the realistic future disturbance in order to facilitate other development activities.

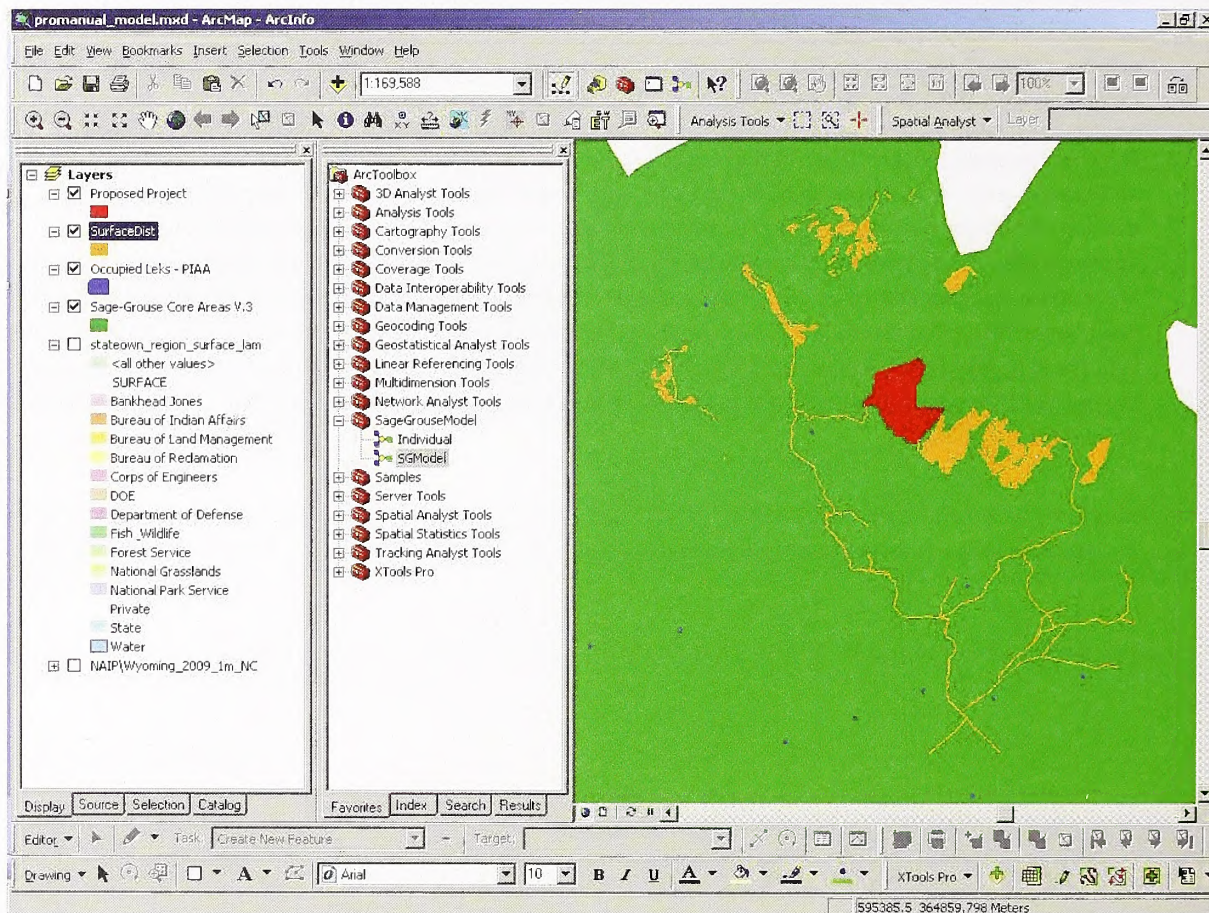


Revised 7.13.11

**How to Run the DDCT using the Model Provided by BLM (only compatible with ArcInfo ArcGIS license):**

Note: For instructions on installing the model please see the end of this document.

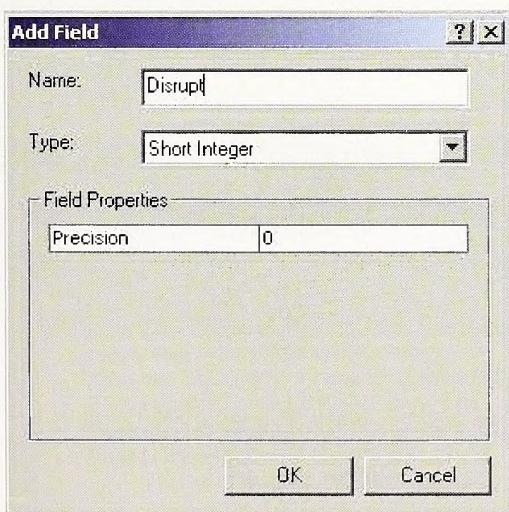
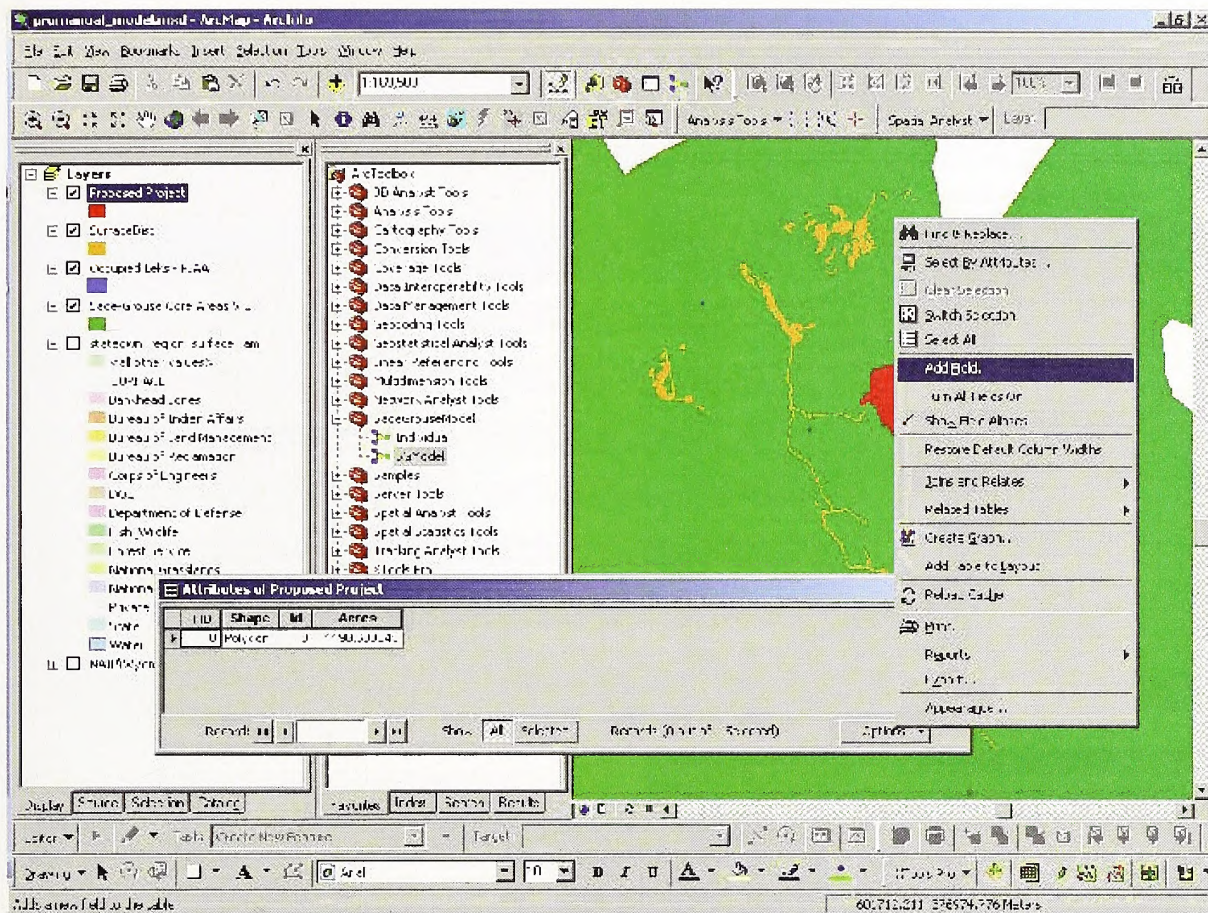
1. Make sure the SageGrouseModel toolbox has been added to ArcToolbox.
2. Add the proposed project boundary, sage-grouse version 3 core areas, occupied leks/ perimeter file, state surface ownership, and surfacedist feature class from the surfdist geodatabase to ArcMap. (Add data button>navigate to where those listed files are stored)



3. Open the attribute table of the proposed disturbance file. Add a Disrupt and a Disturb field to the attribute table, short integer type (Options>Add Field, repeat for Disturb field). Populate both fields with a value of 1 (Right click on column heading>Field Calculator>Enter 1 in the calculations box>Click OK, repeat for Disturb field). Creating and populating these fields will insure the model will count the proposed disturbance against the 5% disturbance calculation and the 1/640 disruption count.



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4. Open the attribute table of the SurfaceDist feature class and ensure the SurfaceDist Disrupt and Disturb fields are populated with 1's and 0's (Right click on column heading>Field Calculator>Enter 1 or 0 in the calculations box>Click OK, repeat for Disturb field) according to the type of disturbance. If a feature is not deemed a disruption or disturbance the value can be changed to 0 later and the model rerun to get accurate values. <sup>1</sup>

OBJECTID	SHAPE	Id	Type	Reclaimed	Source	Date_Digit	Comments	Disrupt	SHAPE_Area
1	Polygon	0	36			<Null>		1	8183692.294987
2	Polygon	0	11			<Null>		1	33374.136139
3	Polygon	0	11			<Null>		0	424858.061706
4	Polygon	0	20			<Null>		0	19856.327856
5	Polygon	0	20			<Null>		0	65838.78945
6	Polygon	0	27			<Null>		0	108614.222484
7	Polygon	0	10			<Null>		0	12276.665741
8	Polygon	0	10			<Null>		0	1953.832885
9	Polygon	0	10			<Null>		0	2855.007436
10	Polygon	0	20			<Null>		0	45.893457
11	Polygon	0	20			<Null>		0	31.654771
12	Polygon	0	20			<Null>		0	41.615376
13	Polygon	0	27			<Null>		0	22666.138421
14	Polygon	0	27			<Null>		0	28453.439402
15	Polygon	0	27			<Null>		0	1710.130345
16	Polygon	0	27			<Null>		0	14667.933175
17	Polygon	0	27			<Null>		0	2936.441769
18	Polygon	0	27			<Null>		0	1559.028363

Field Calculator

Fields:

- OBJECTID
- SHAPE
- Id
- Type
- Reclaimed
- Source
- Date\_Digit
- Comments
- Disrupt
- Disturb
- SHAPE\_Length
- SHAPE\_Area

Type:

- ☒ Number
- ☐ String
- ☐ Date

Functions:

- Abs ( )
- Atn ( )
- Cos ( )
- Exp ( )
- Fix ( )
- Int ( )
- Log ( )
- Sin ( )
- Sqr ( )

Disrupt = 1

☐ Advanced

☒ Calculate selected records only

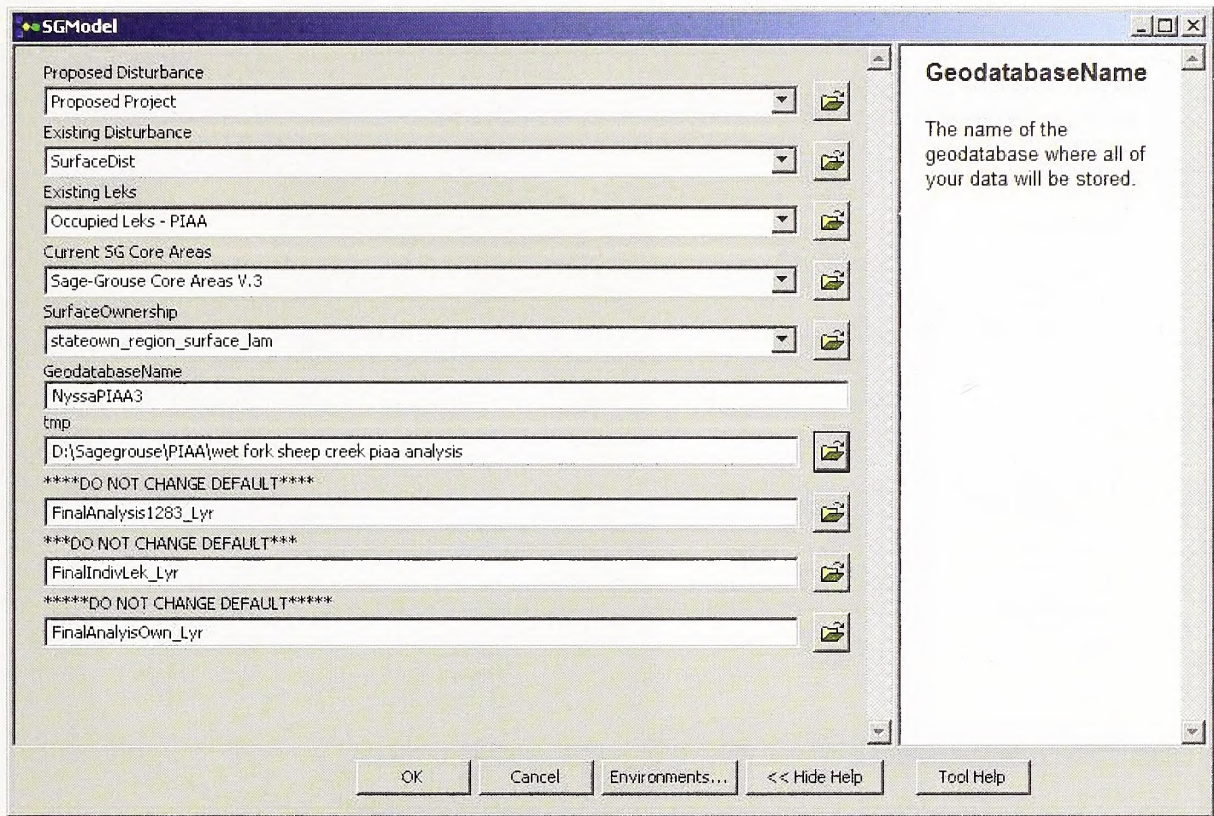
OK

<sup>1</sup> Oil and gas and mining activities are the only disruptions that count towards the 1/640 density calculation

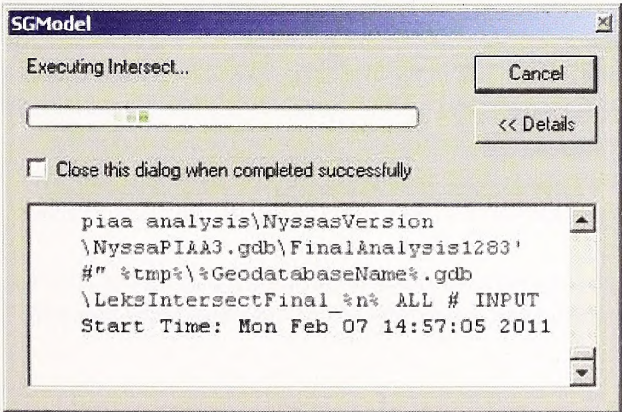


DDCT Process Manual

- 5. Double click on the “SGModel” tool.
- 6. Fill in the appropriate fields in the pop up box using the five files already added to ArcMap.



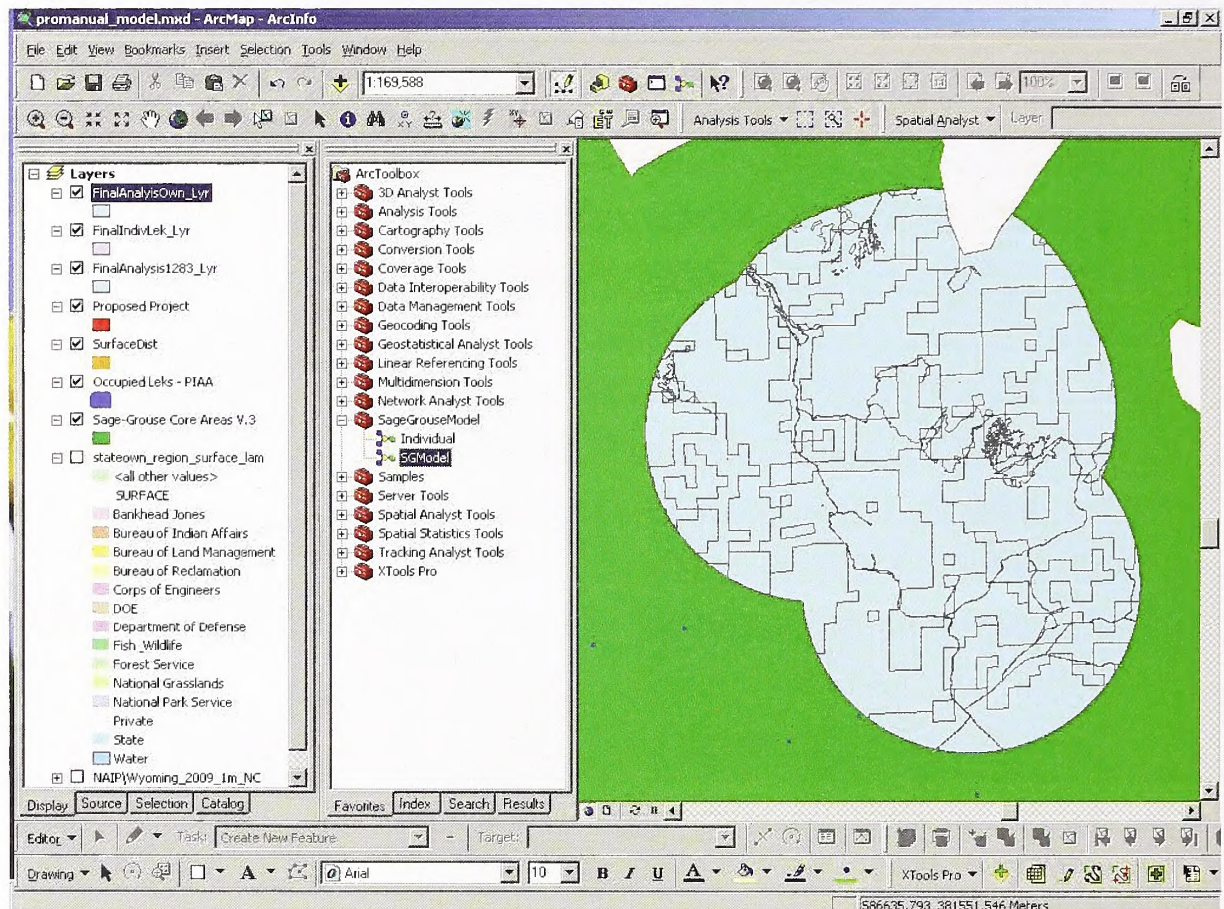
- 7. Designate a location to save the model outputs.
- 8. Click OK to run the model. The model could take up to 15 minutes to run.





## DDCT Process Manual

9. Click Close when the model has completed. Three files should have been added to ArcMap, FinalIndivLek\_Lyr, FinalAnalysis1283\_Lyr, and FinalOwn1283\_Lyr. These are the final model outputs. To see all the model outputs navigate to where the model was stored in Step 7 and add the desired files to ArcMap.



10. Make sure all current surface disturbances have been captured within the SurfDist geodatabase. Add the NAIP imagery to ArcMap. Scan the NAIP imagery at 1:5000 scale to determine that the current surface disturbance file captured all surface disturbance. Digitize any left out surface disturbance and then rerun the model starting from Step 1. Remember, if the model is rerun to rename the first set of model outputs (FinalAnalysis1283\_Lyr and FinalIndivLek\_Lyr) or the model will not run again. If the entire surface disturbance has been captured skip to next step.
11. Look in the attribute table of FinalAnalysis1283\_Lyr to see what percentage of surface disturbance the DDCT has reached. If there are display issues with the acreage calculation please refer to the "How to Add the Model to ArcToolbox" section of this manual.



## DDCT Process Manual

Attributes of FinalAnalysis1283_Lyr						
	OBJECTID *	Shape *	Final	Acres	Total_1	Percent
	1	Polygon	Disturbed	3427.19587	Total	4.816679
	2	Polygon	Undisturbed	67725.476022	Total	95.183321

Record: 0 Show: All Selected Records (0 out of 2)

12. Open the attribute table for the FinalIndivLek\_Lyr file and check to see what the percent disturbance is for each lek within the DDCT boundary.

Attributes of FinalIndivLek_Lyr							
	OBJECTID *	Shape *	Disturb	Acres	Final	LekID	Lek_1
	1	Polygon	<Null>	1603.497397	Disturbed	27-Mud Springs 3	Lek 0
	2	Polygon	<Null>	30705.796536	Undisturbed	27-Mud Springs 3	Lek 0
	3	Polygon	<Null>	1993.585757	Disturbed	27-Old Highway	Lek 1
	4	Polygon	<Null>	30312.383651	Undisturbed	27-Old Highway	Lek 1

Record: 0 Show: All Selected Records (0 out of 4 Selected) Option

13. Open the attribute table for the FinalAnalysisOwn\_Lyr and check to see what percentage of disturbance is occurring on each surface ownership type. This is especially important to BLM to highlight how much of the disturbance is within agency control.

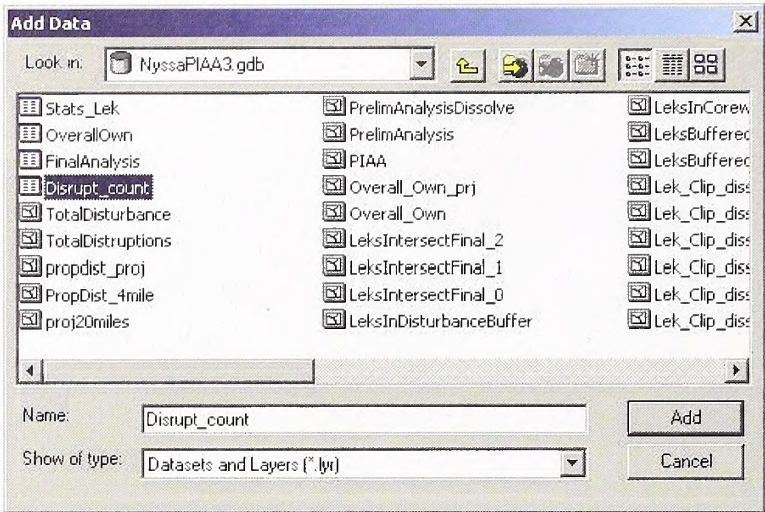
Attributes of FinalAnalysisOwn_Lyr										
	OBJECTID *	Shape *	Final	SURFACE	Shape_Length	Shape_Area	Acres	Total_1	SUM_Acres	Percent
	1	Polygon	Disturbed	Bureau of Land Management	62785.787004	2527409.782047	62455406	Total	71097463332	0.87843
	2	Polygon	Disturbed	Private	166733.66704	6306254.404264	166467388	Total	71097463332	2.327332
	3	Polygon	Disturbed	State	103676.743102	3700203.031594	1422300254	Total	71097463332	2.00061
	4	Polygon	Undisturbed	Bureau of Land Management	298059.16501	97336776.171086	24176391402	Total	71097463332	34.004577
	5	Polygon	Undisturbed	Private	447270.334765	1154176846.671531	2954387155	Total	71097463332	40.268106
	6	Polygon	Undisturbed	State	267357.077227	58385835.930242	14575399186	Total	71097463332	20.500955

Record: 1 Show: All Selected Records (0 out of 6 Selected) Options

14. Navigate to where the output DDCT geodatabase was stored in Step 7. Add the table Disrupt\_count to ArcMap. Open this table to see the count of disruptions within the DDCT. Use this number to check whether the DDCT is exceeding the 1 average disruption per 640 acres threshold.



DDCT Process Manual



Attributes of Disrupt\_count

OBJECTID *	FREQUENCY	COUNT_Disrupt
1	28	28

Record: 1 Show: All Selected

**How to Report Your DDCT Results to the Appropriate Permitting Agency:**

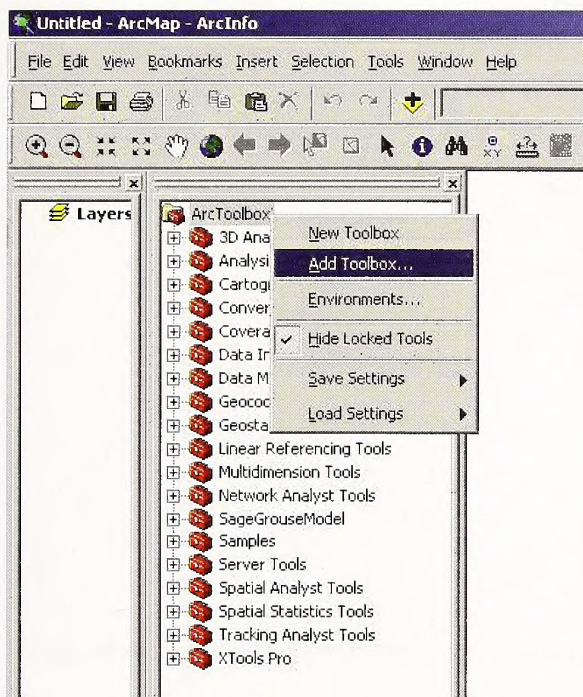
Provide a map of the DDCT results including: the DDCT boundary, sage-grouse core areas, core area occupied leks and perimeters, proposed project boundary, and current surface disturbance clearly labeled. Also, include DDCT figures (disturbance, density, etc), comments on the project, and the output DDCT geodatabase.

Revised 7.13.11

**How to Add the Model to ArcToolbox:**

You must know where the model is stored on your computer to complete these steps.

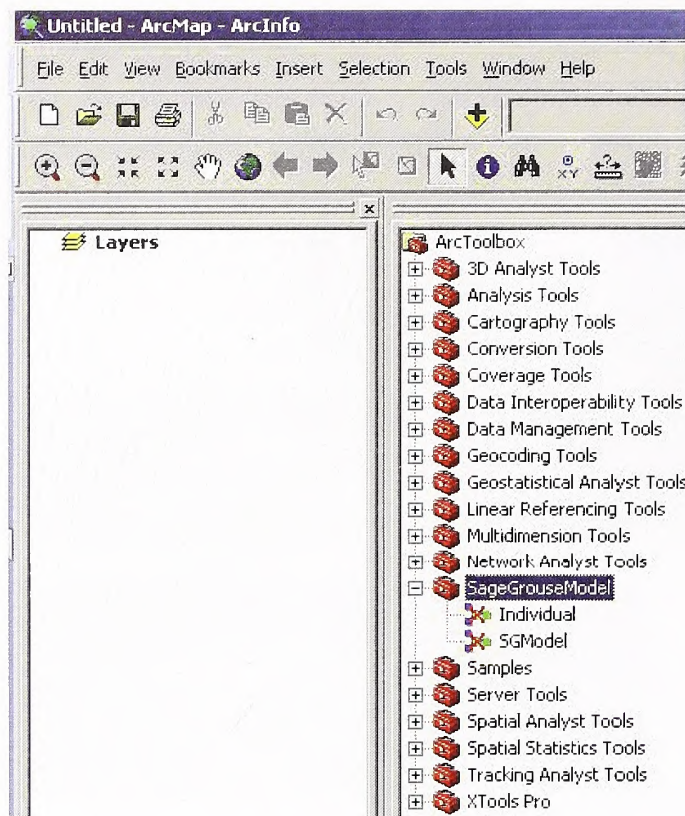
1. Open ArcMap
2. Display the ArcToolbox Window (Click on the red toolbox icon on standard toolbar).
3. Right click on ArcToolbox (top of window) and select Add Toolbox.



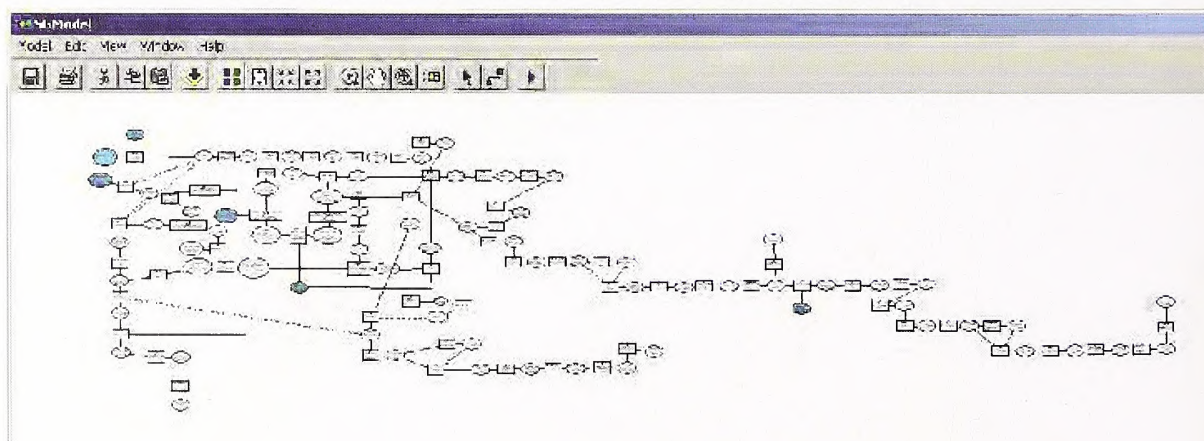
4. Navigate to where the SageGrouseModel Toolbox is stored, select it and click Open.
5. After the toolbox is added right click ArcToolbox again and select Save Settings to Default. This will insure the model is available every time ArcMap is opened.
6. Expand the SageGrouseModel toolbox by clicking on the + next to it.



## DDCT Process Manual



7. There will be two models, SGModel and Individual; SGModel will have a red X through the icon. To fix the red X and make the model run complete the following steps:
  - a. Right click on the SGModel and select Edit.
  - b. Look for the Create File GDB box. It will be a white box with a red X, located in the upper left hand corner of the model and highlighted with a red circle below. Double Click it.



DDCT Process Manual

- c. Navigate to the Data Management Workspace toolbox and add the “Create File GDB” Tool (should be located at C:\program files\ArcGIS\ArcToolbox\Toolboxes\Data Management Tools\Workspace\Create File GDB).
  - d. Save the model and close it.
8. The red X through the model icon should be gone and the models are ready to run.



## DDCT Process Manual

**How to Delineate a DDCT Step by Step:**

If you run the model provided by BLM then you will not have to delineate a DDCT step by step. It is important to understand the concepts and actions the model is completing. This process is outlined in Attachment B of the Executive Order.

1. Buffer the proposed disturbance area or project boundary by 4 miles. (ArcToolbox>Analysis Tools>Proximity>Buffer)
2. Clip the project boundary buffer created in Step 1 to the sage-grouse core areas. (ArcToolbox>Analysis Tools>Extract>Clip)
3. Use the clipped project boundary created in Step 2 to select all occupied core area sage-grouse occupied leks/perimeters occurring within that 4 mile buffer. (Select by Location > Select features from occupied leks/perimeters that are within created buffer)
4. Buffer all occupied leks/perimeters captured in Step 3 by 4 miles. (ArcToolbox>Analysis Tools>Proximity>Buffer)
5. Clip the occupied lek/perimeter buffer to the sage-grouse core areas. (ArcToolbox>Analysis Tools>Extract>Clip)
6. Union the clipped project area buffer and the clipped occupied lek/perimeters buffer together. (ArcToolbox>Analysis Tools>Overlay>Union)
7. Dissolve the above Union into a polygon. This polygon represents the DDCT area. (ArcToolbox>Data Management Tools>Generalization>Dissolve)
8. Locate all existing disturbance within the DDCT. After analyzing all the available disturbance files scan the entire DDCT with the 2009 True Color NAIP imagery in the background at a 1:5000 scale. Digitize all disturbances that have not been captured, or appear inaccurate, in the SurfDist geodatabase, available on the ftp\_piaa site. Turn on Editing> Task is Create New Feature> Use the Sketch Tool (looks like a pencil) to digitize disturbance. Make sure to use the SurfDist geodatabase as it will help standardize data collection for a statewide disturbance file. Make sure none of the disturbance polygons overlap; this will over calculate the disturbed acres. Dissolve all disturbance files and/or all polygons within that file together after the digitizing to eliminate this problem.
9. Clip the disturbance file to the DDCT boundary. (ArcToolbox>Analysis Tools>Extract>Clip)
10. Calculate the acreage for the surface disturbance file, the DDCT, and the proposed project boundary. (X-Tools Pro>Table Operations>Calculate Acres)
11. Add the total disturbed acres and the total acres of the project boundary together and compare to 5% of the DDCT acres.
12. Count the number of disruptions in the DDCT and verify that it does not exceed the average of 1 disruption per 640 acres threshold.
13. To conduct the optional individual occupied lek analysis, retrieve the occupied lek/perimeter buffer file that was clipped to the sage-grouse core areas in step 5. Use this file to clip each occupied lek buffer to the surface disturbance and proposed disturbance files. Calculate acreage figures based on those clips to evaluate to individual impacts to the occupied leks within the DDCT boundary selected in step 3. This analysis is only used to derive alternatives and has no bearing on the overall outcome of the 5% disturbance threshold and the 1 average disruption per 640 acres threshold.
14. Report results by providing a map of the DDCT analysis with the DDCT boundary, sage-grouse core areas, occupied core area occupied leks and perimeters, proposed project boundary, and current surface disturbance clearly labeled. Also, include DDCT figures, comments on the project, and the file outputs from performing the DDCT analysis.



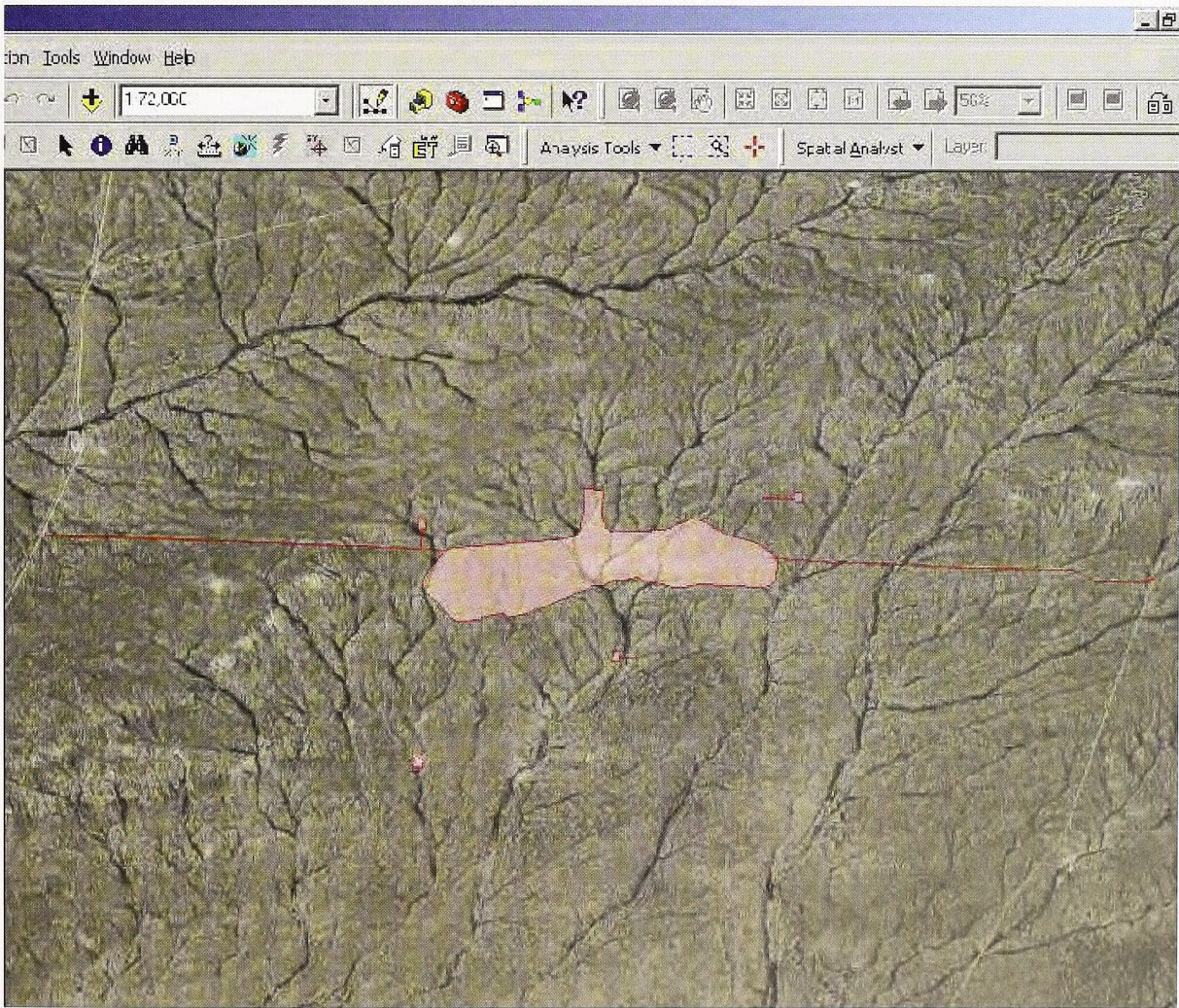
Examples of Proposed Project Boundaries:

Attribute table with Disrupt and Disturb fields populated with a value of 1.

Attributes of proposed surface disturbance						
	FID	Shape	Id	Acres	Disrupt	Disturb
	0	Polygon	0	496.995301	1	1
	1	Polygon	0	514.077481	1	1

Record: 1 Show: All Selected Records (0 out)

Mine:

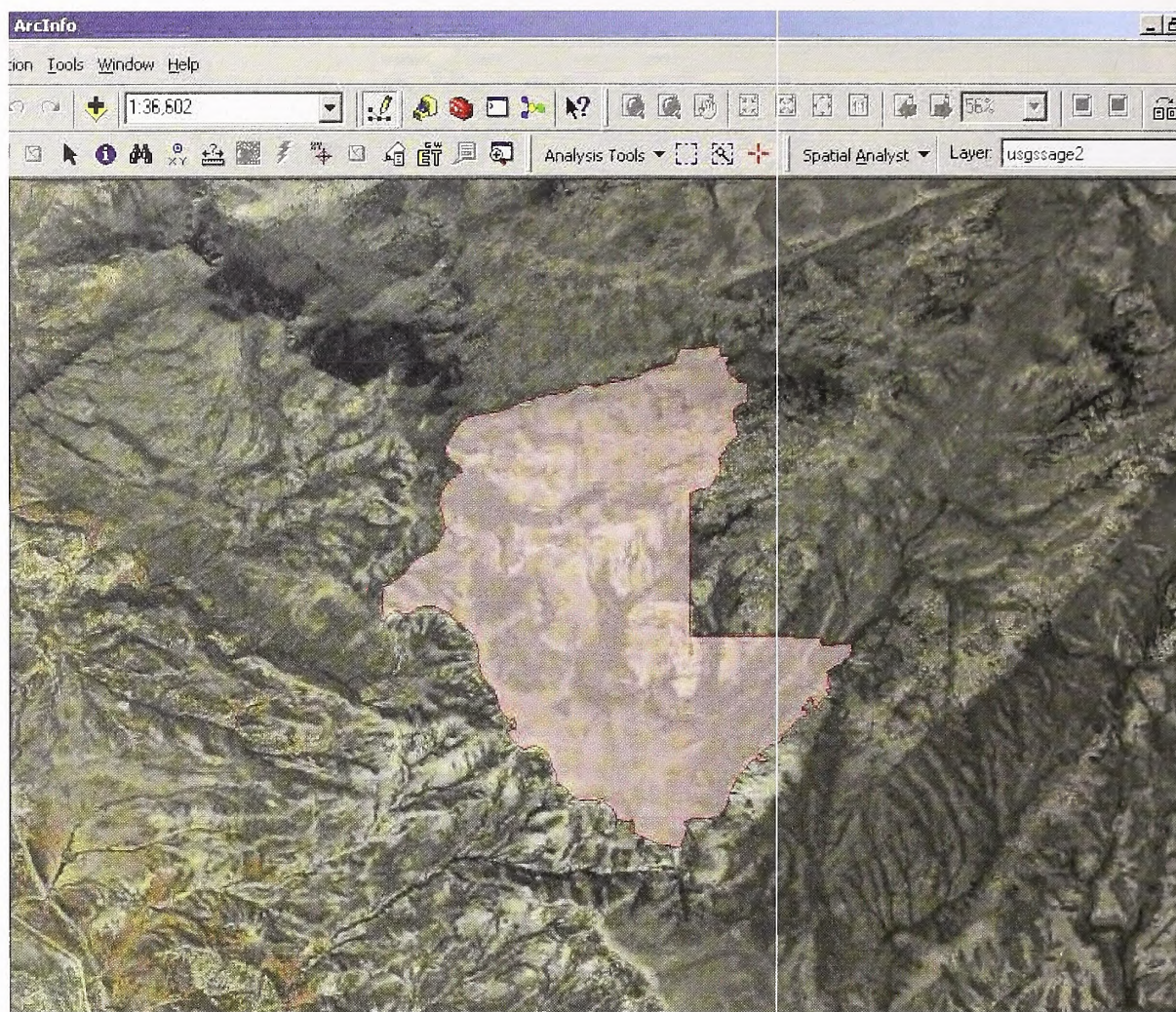




DDCT Process Manual

**Examples of Proposed Project Boundaries:**

Burn Vegetation Treatment:

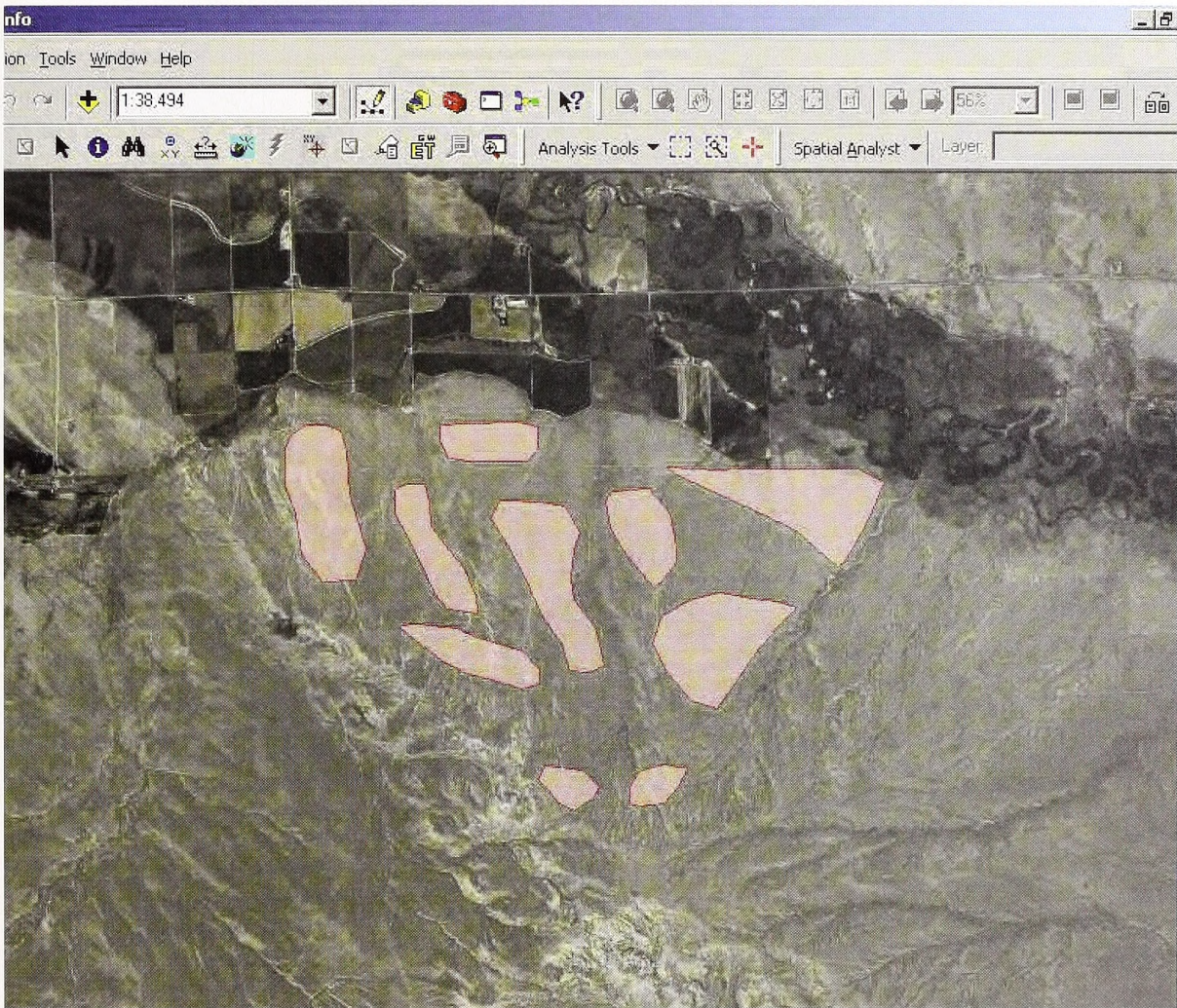




DDCT Process Manual

Examples of Proposed Project Boundaries:

Mowing Vegetation Treatment:

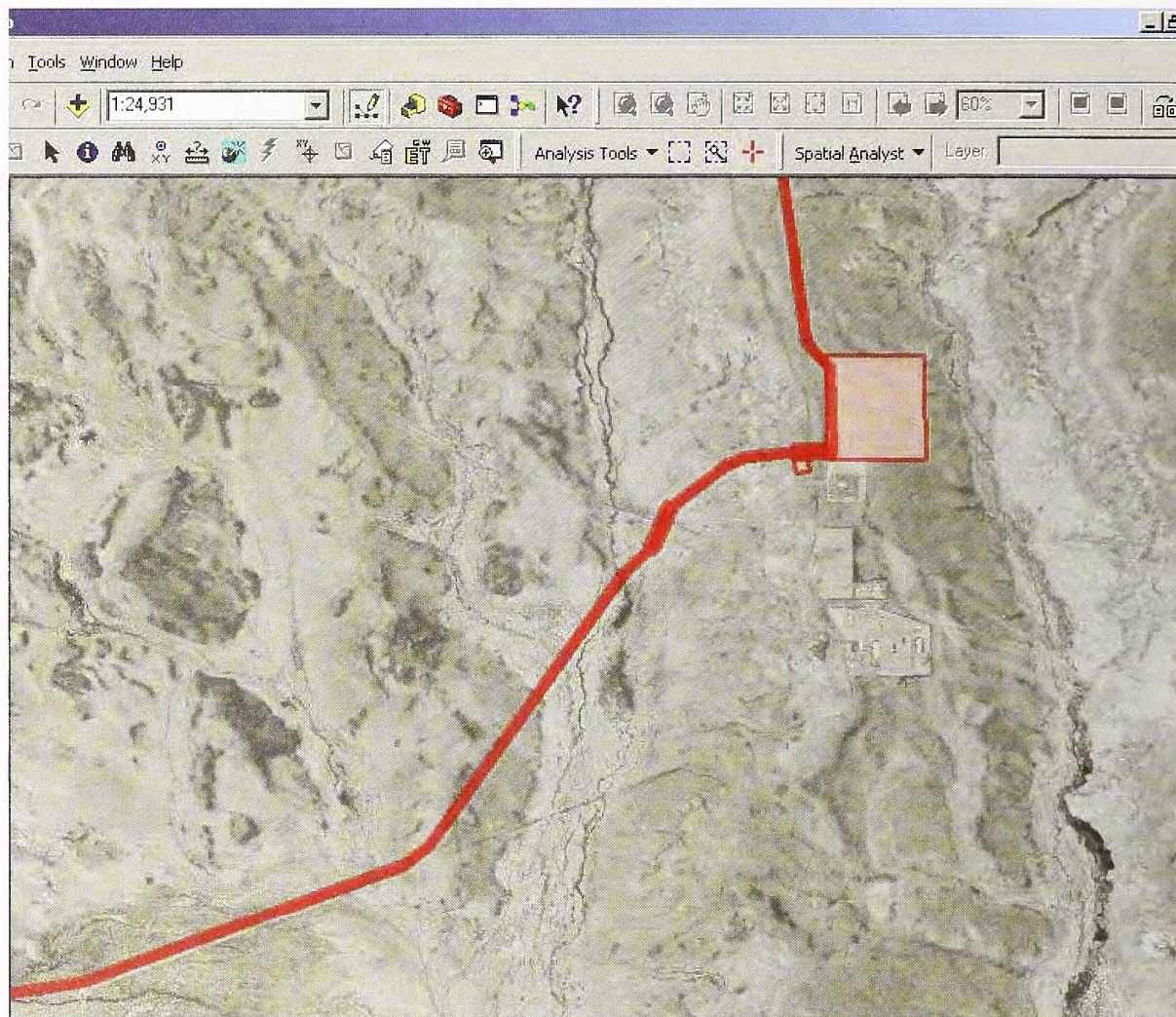




DDCT Process Manual

### Examples of Proposed Project Boundaries:

Pipeline Section:

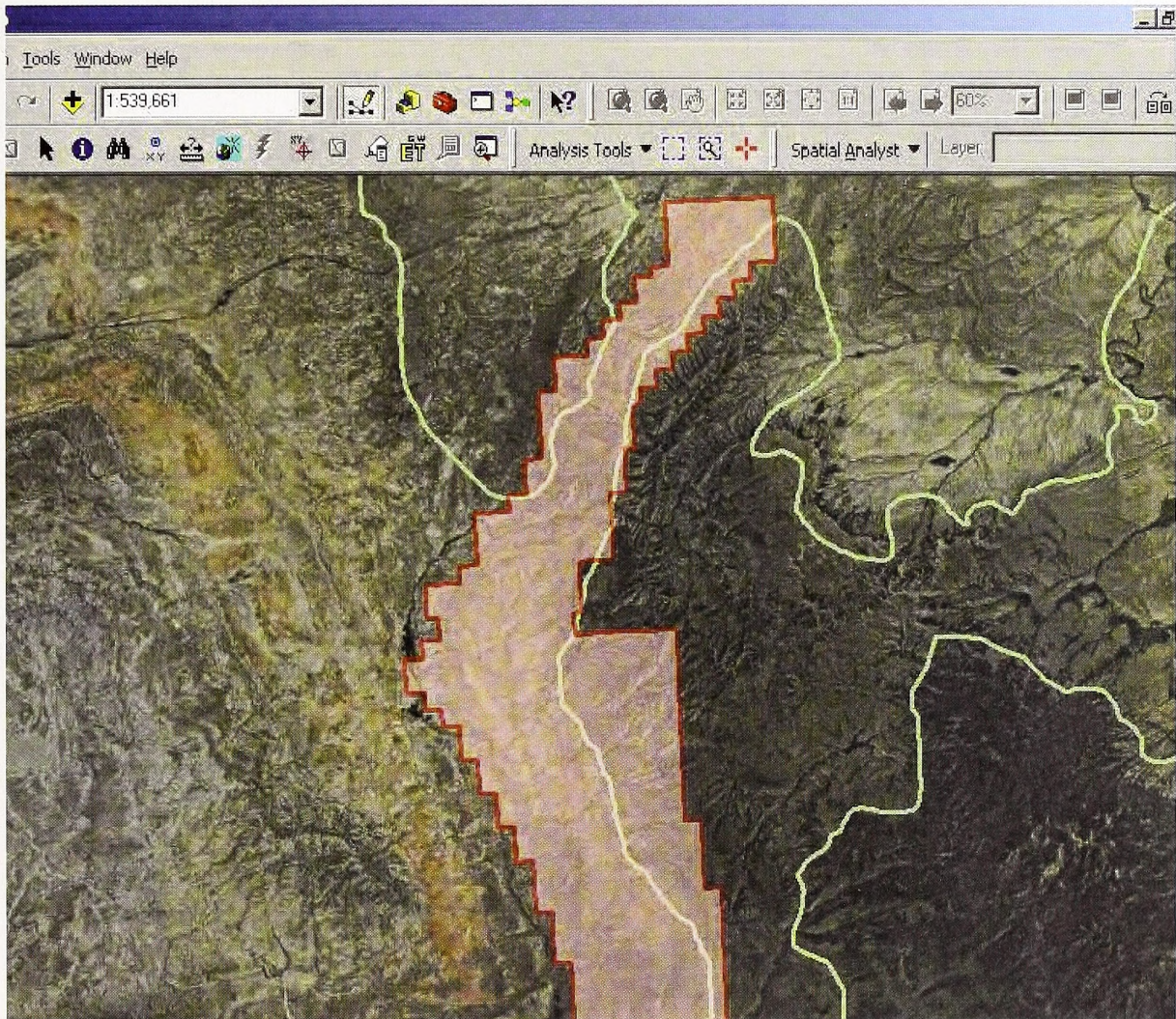




## DDCT Process Manual

**Examples of Proposed Project Boundaries:**

Oil and Gas Field:

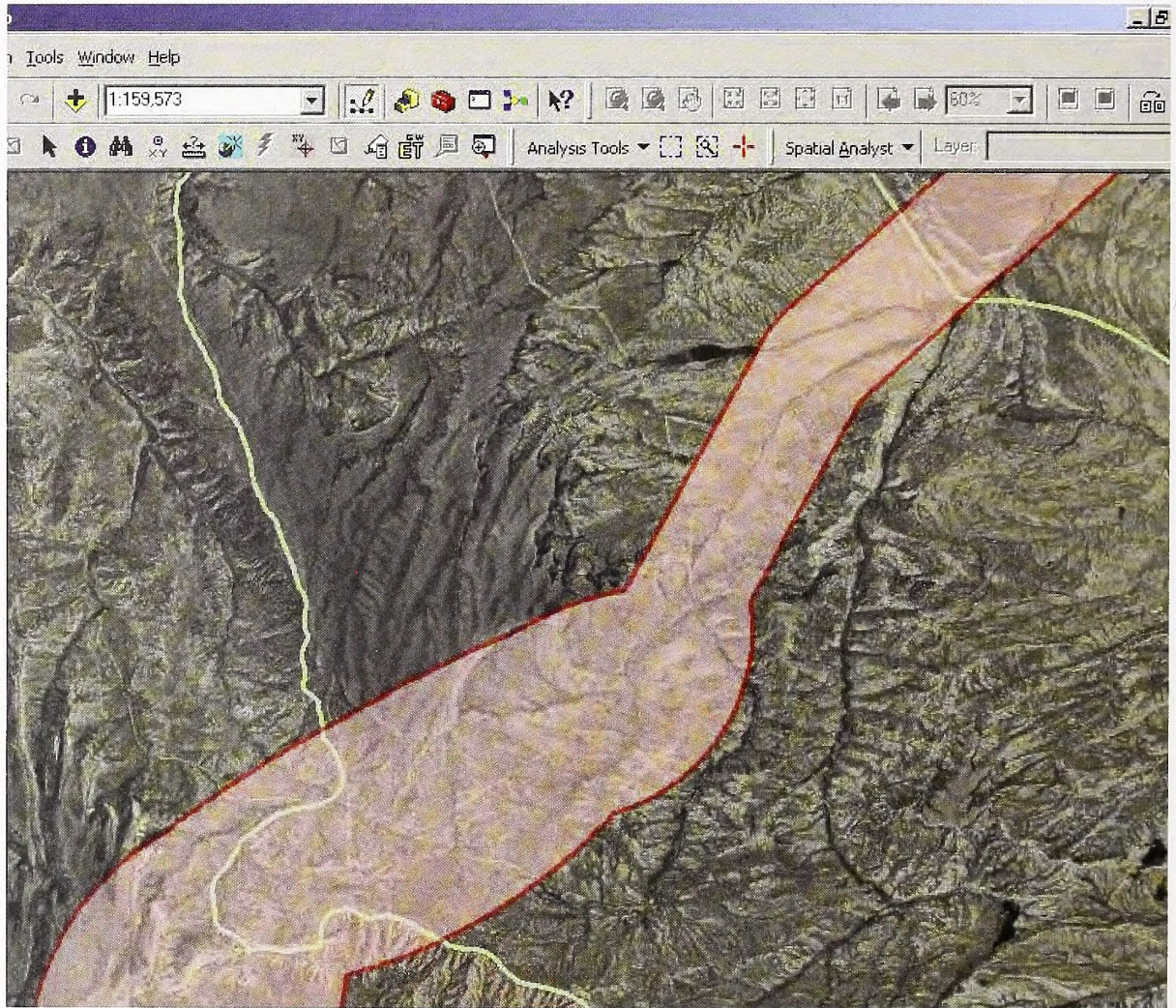




DDCT Process Manual

**Examples of Proposed Project Boundaries:**

Transmission Line Scoping Polygon (if specific disturbance plan provided use that boundary):





## DDCT Process Manual

Examples of Existing Disturbance: SurfDist geodatabase filled out attribute table:

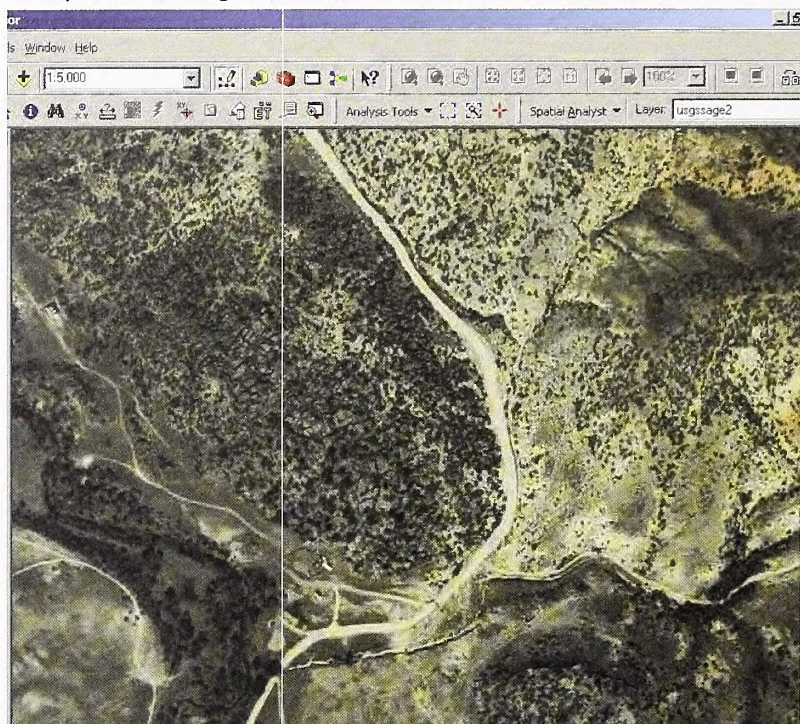
OBJECTID	SHAPE	Id	Type	Reclaimed	Source	Date_Digit	Comments	Disrupt	Disturb	SHAPE_Length	SHAPE_Area
8	Polygon	0	10			<Null>		0	1	747.618465	1953.832885
1	Polygon	0	36			<Null>		1	1	99860.067474	8183692.294987
2	Polygon	0	11			<Null>		1	1	3936.958426	33374.136139
3	Polygon	0	11			<Null>		1	1	49743.634678	424858.061706
4	Polygon	0	20			<Null>		1	1	564.79964	19856.327856
5	Polygon	0	20			<Null>		1	1	1025.413337	65838.78945
6	Polygon	0	27			<Null>		1	1	2185.776963	108614.222484
7	Polygon	0	10			<Null>		1	1	3869.891612	12276.665741
9	Polygon	0	10			<Null>		1	1	1144.754759	2856.007436
10	Polygon	0	20			<Null>		1	1	27.660291	45.893457
11	Polygon	0	20			<Null>		1	1	22.795706	31.654771
12	Polygon	0	20			<Null>		1	1	27.526922	41.615376
13	Polygon	0	27			<Null>		1	1	725.737085	22666.138421
14	Polygon	0	27			<Null>		1	1	1028.926146	28453.439402
15	Polygon	0	27			<Null>		1	1	177.627156	1710.130345
16	Polygon	0	27			<Null>		1	1	596.699555	14667.933175
17	Polygon	0	27			<Null>		1	1	2996.441769	194995.735232
18	Polygon	0	27			<Null>		1	1	1559.028363	40446.57359
19	Polygon	0	27			<Null>		1	1	3281.158198	277376.039948
20	Polygon	0	10			<Null>		1	1	2708.42623	8891.481605
21	Polygon	0	10			<Null>		1	1	2299.12306	8346.938912
23	Polygon	0	10			<Null>		1	1	1398.638066	4132.167842
24	Polygon	0	27			<Null>		1	1	2018.829534	117668.390758
25	Polygon	0	10			<Null>		1	1	1263.520922	5308.11559
26	Polygon	0	27			<Null>		1	1	1157.260819	33367.345466
27	Polygon	0	27			<Null>		1	1	823.73695	30965.385098
28	Polygon	0	27			<Null>		1	1	2921.244548	162950.314061
29	Polygon	0	10			<Null>		1	1	934.712849	2345.276161
30	Polygon	0	20			<Null>		1	1	43.392568	116.835049
31	Polygon	0	20			<Null>		1	1	39.816611	95.576483
32	Polygon	0	20			<Null>		1	1	23.037121	32.339487
33	Polygon	0	10			<Null>		1	1	7960.455351	21557.754959
34	Polygon	0	10			<Null>		1	1	4915.59656	24942.814781
35	Polygon	0	10			<Null>		1	1	1110.889438	3671.50133
36	Polygon	0	10			<Null>		1	1	1486.805057	4999.87839
37	Polygon	0	20			<Null>		1	1	42.996247	114.881361
38	Polygon	0	20			<Null>		1	1	54.076848	174.27918
39	Polygon	0	20			<Null>		1	1	77.827705	351.559177
40	Polygon	0	20			<Null>		1	1	25.775756	40.567655
41	Polygon	0	10			<Null>		1	1	25000.162698	78632.142017
42	Polygon	0	20			<Null>		1	1	54.274612	182.683737
43	Polygon	0	10			<Null>		1	1	3212.876879	12635.36727
44	Polygon	0	26			<Null>		1	1	669.430227	16264.211978

Record: 1 Show: All Selected Records (0 out of 52 Selected) Options

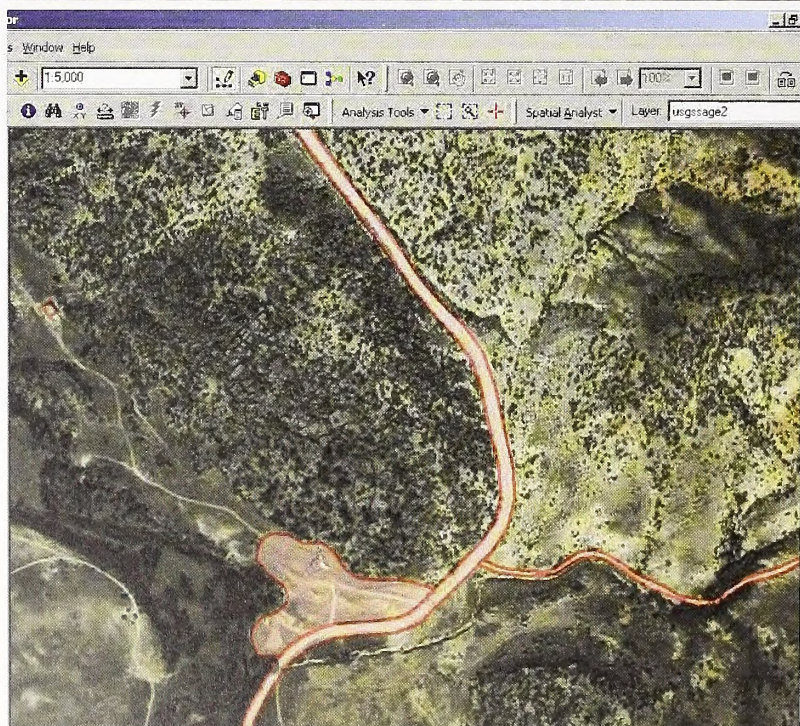


## DDCT Process Manual

## Examples of Existing Disturbance: Ranch, road, and building:



Before

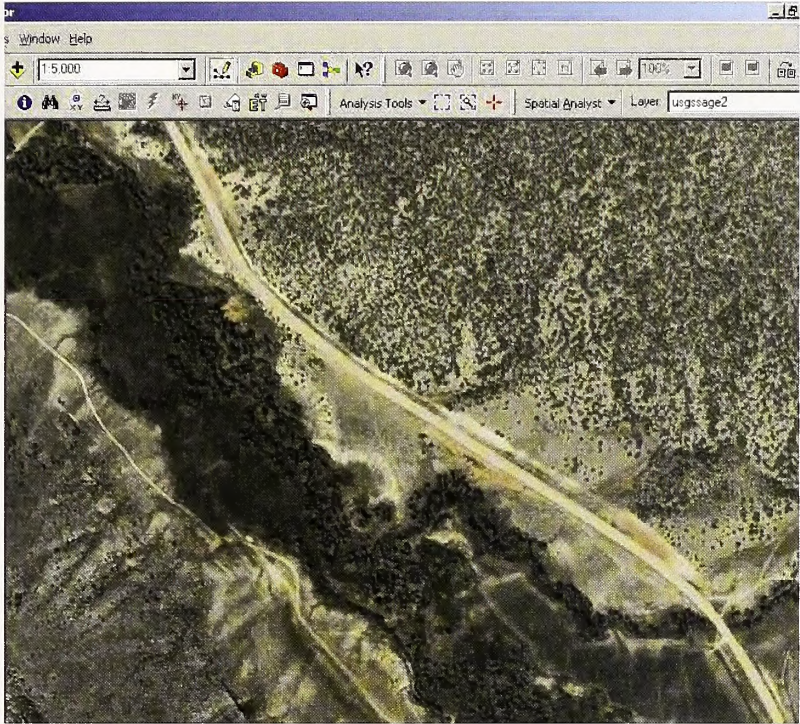


After

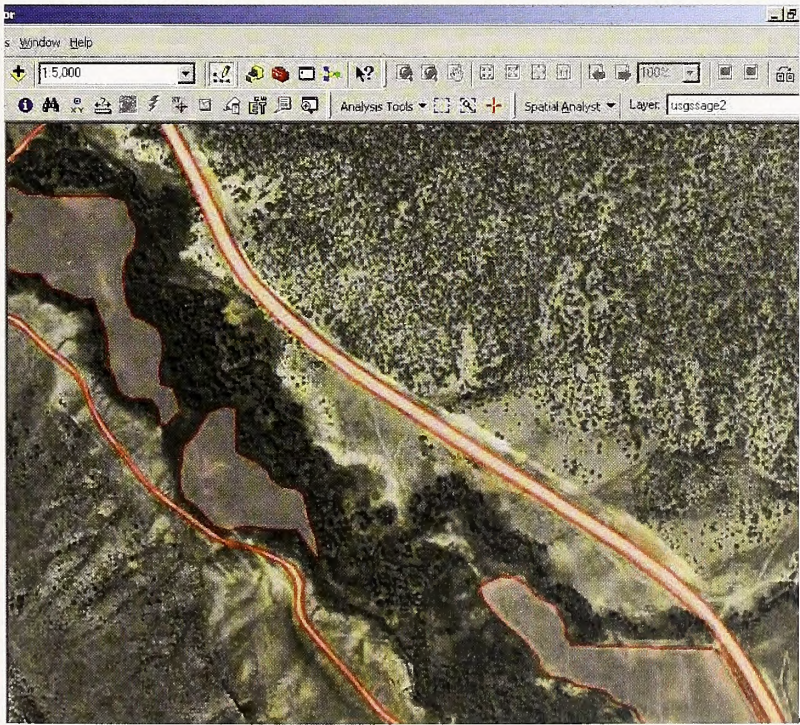


DDCT Process Manual

Examples of Existing Disturbance: Road and cropland:



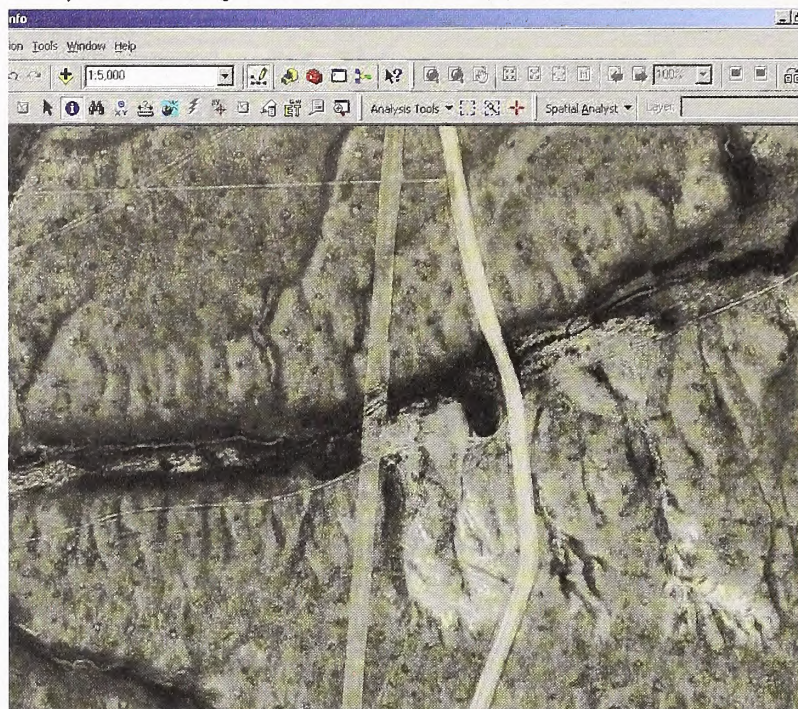
Before



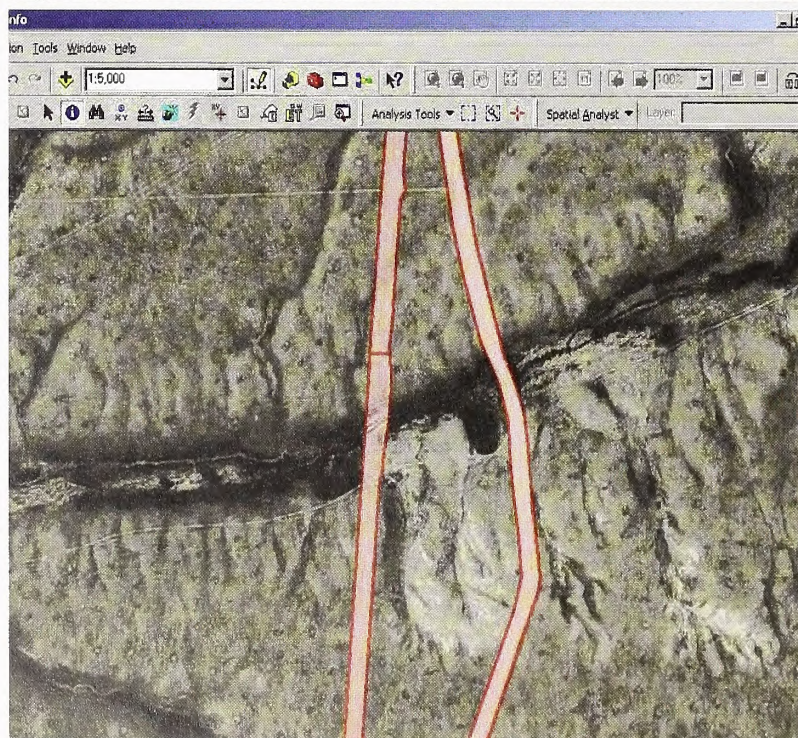
After



## DDCT Process Manual

**Examples of Existing Disturbance: Road and pipeline/utility corridor scar:**

Before

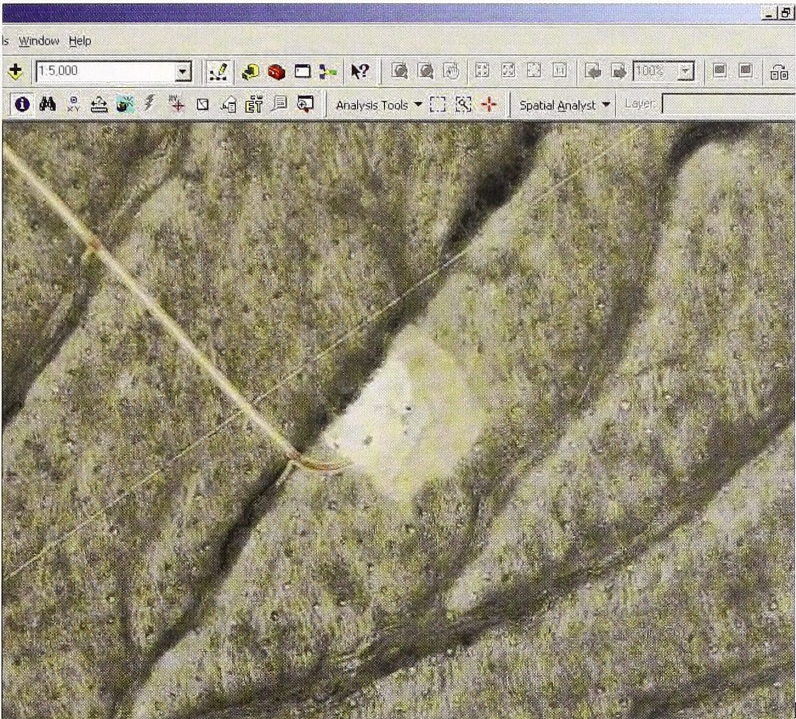


After

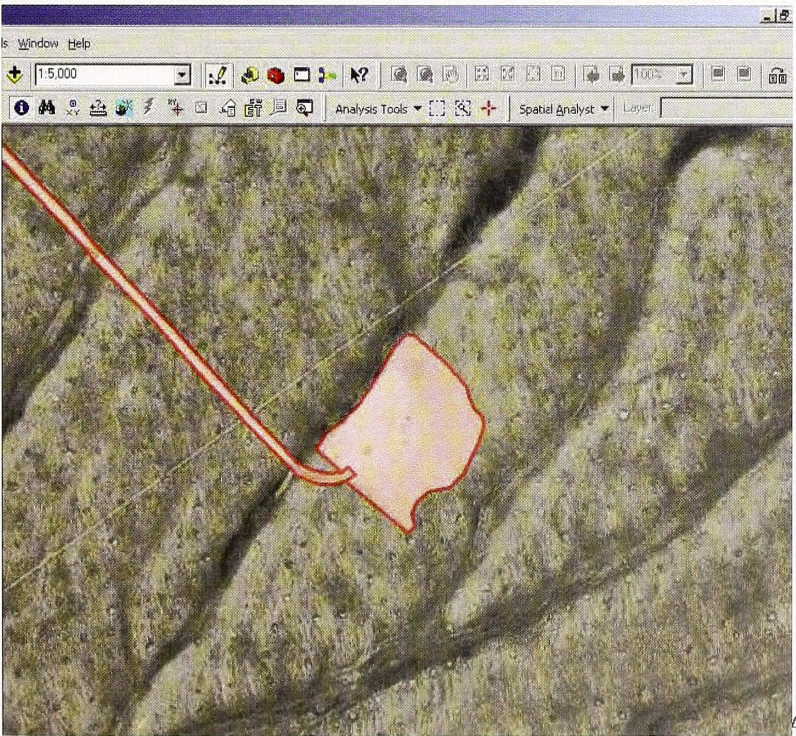


DDCT Process Manual

Examples of Existing Disturbance: Well pad and road:



Before

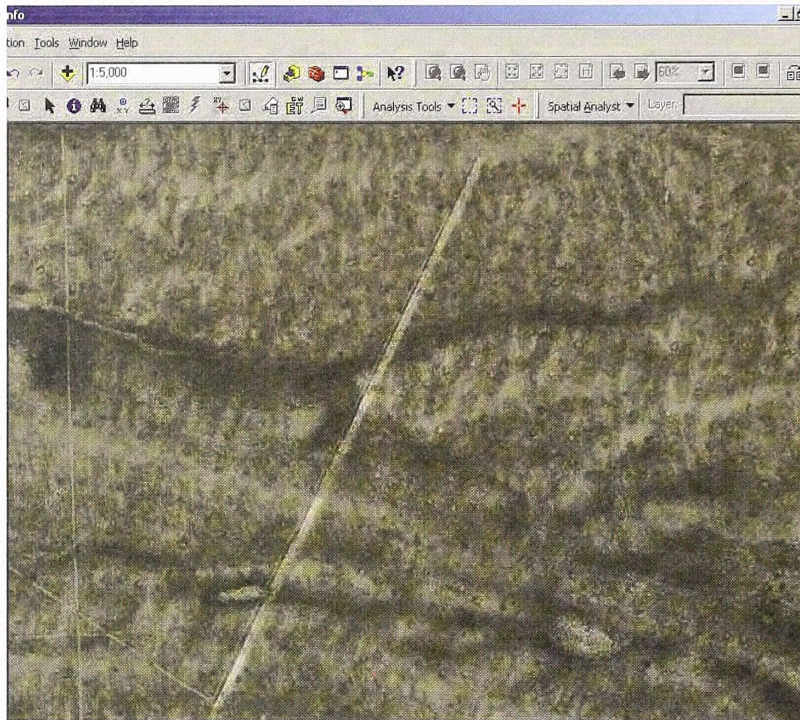


After

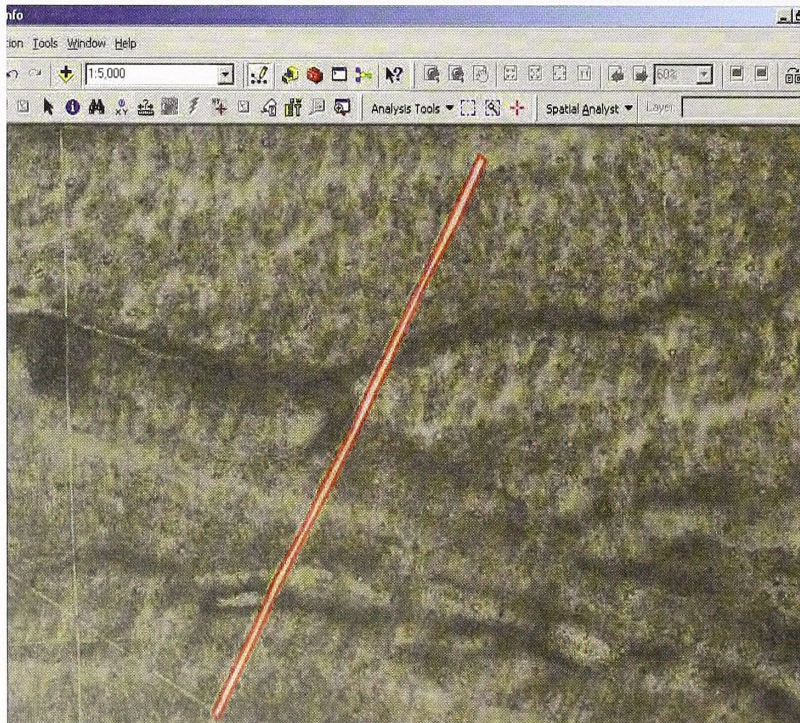


# DDCT Process Manual

## Examples of Existing Disturbance: Landing Strip:



Before

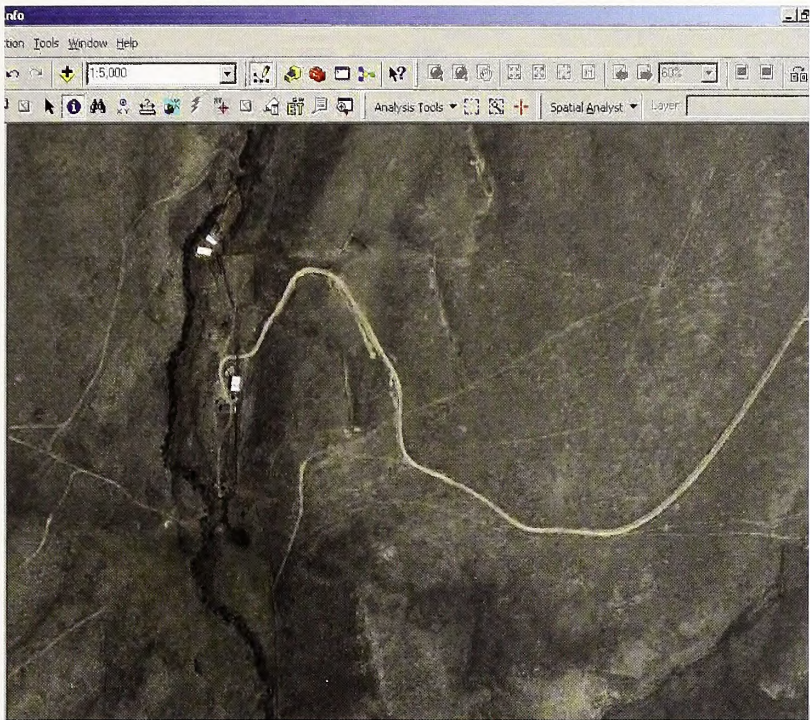


After

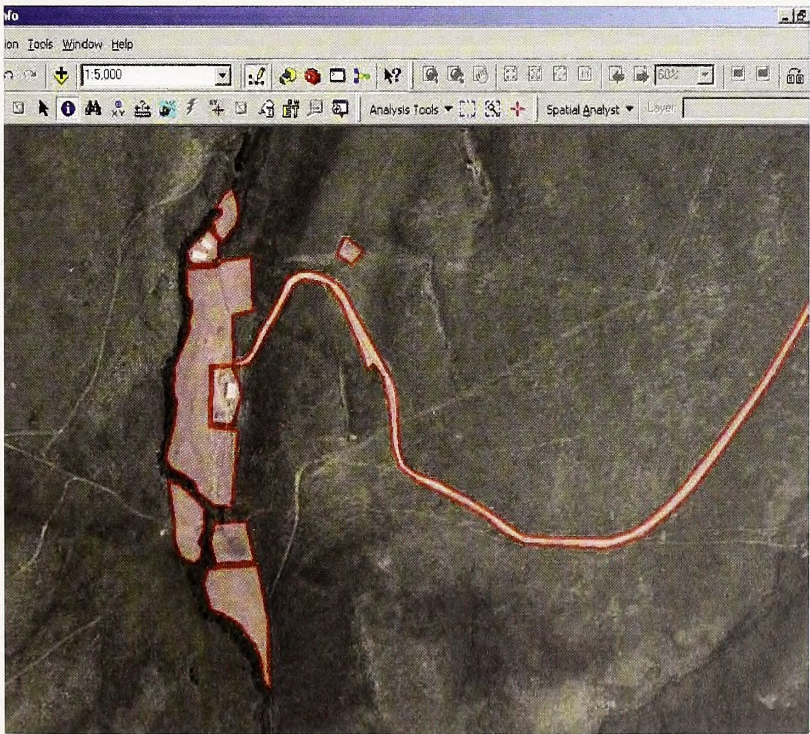


DDCT Process Manual

Examples of Existing Disturbance: Ranch and assorted disturbance:



Before

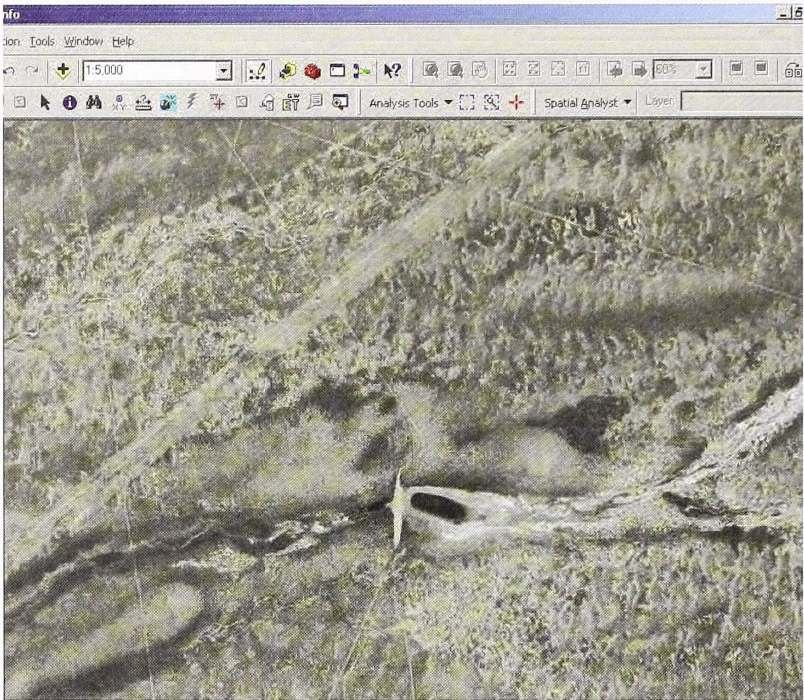


After

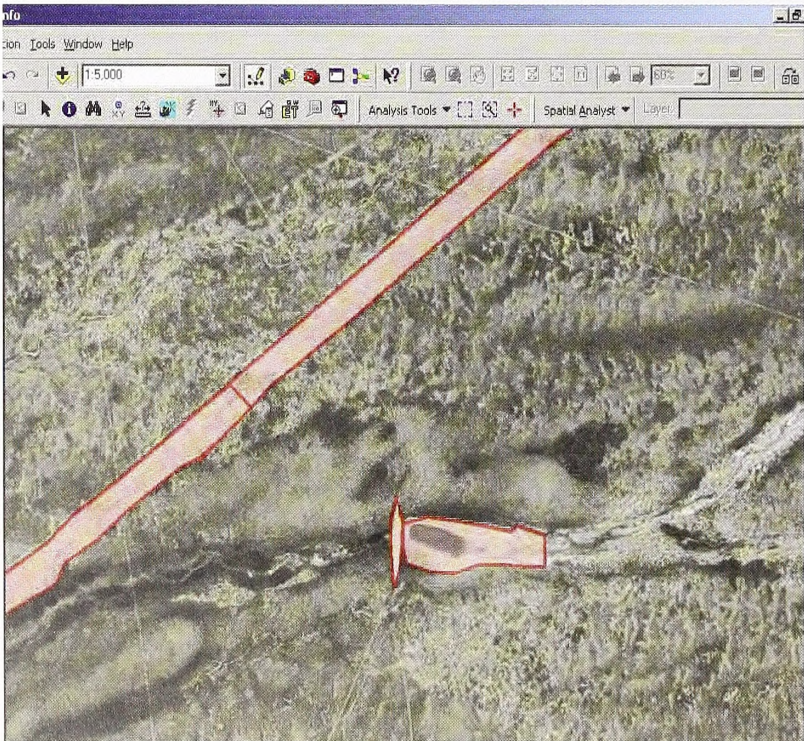


DDCT Process Manual

Examples of Existing Disturbance: Pipeline and watering hole:



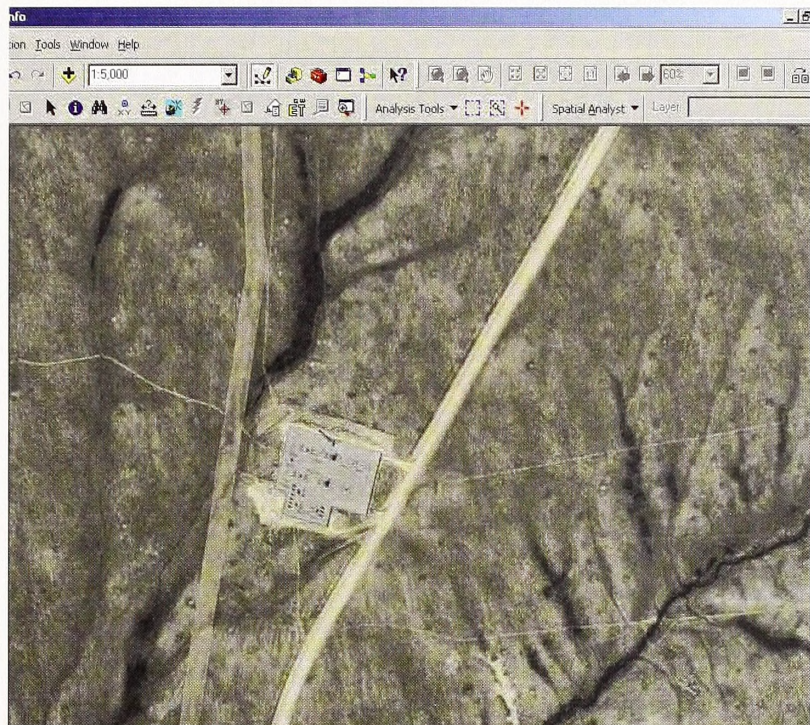
Before



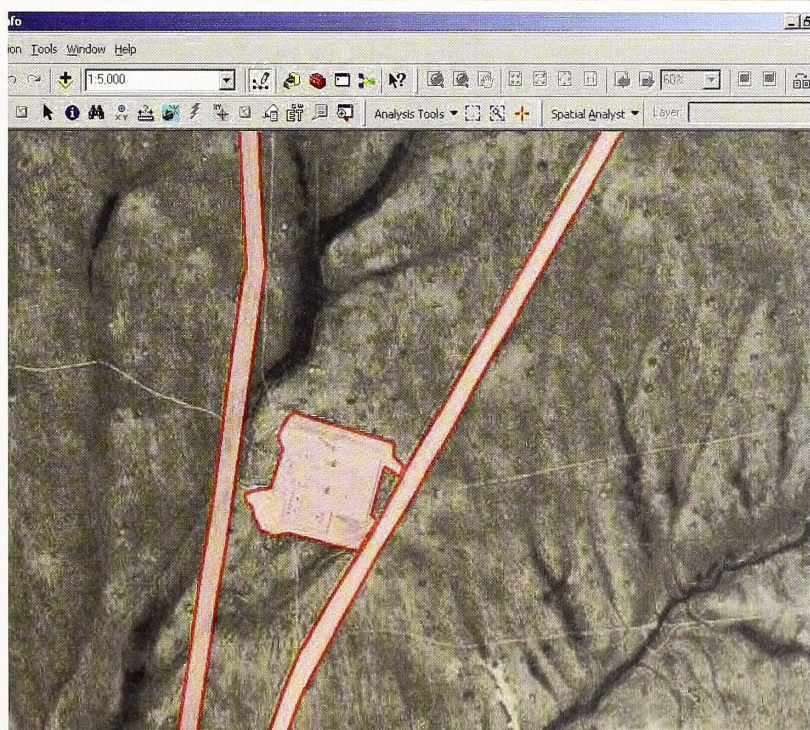
After



## DDCT Process Manual

**Examples of Existing Disturbance: Pipeline, road, and electrical infrastructure:**

Before



After



## Attachment 6

### **WYOMING GAME AND FISH DEPARTMENT PROTOCOLS FOR TREATING SAGEBRUSH TO BE CONSISTENT WITH WYOMING EXECUTIVE ORDER 2011-5; GREATER SAGE-GROUSE CORE AREA PROTECTION (7/8/2011)**

Sagebrush treatments have been implemented or proposed with the assumption of benefiting sage-grouse. Research, monitoring and anecdotal observations suggest that treatments can result in beneficial, benign or harmful impacts to sage-grouse habitat depending on many known and unknown factors.

These protocols are to be used to guide the development of Wyoming Game and Fish Department (WGFD) sponsored or supported sagebrush treatments. The purpose of these protocols is to provide a framework for WGFD projects to ensure that they are consistent with sage-grouse core area and non-core area stipulations. This framework will not answer all questions associated with treatments. It is assumed that these protocols may be revisited as new science becomes available. Communication with the WGFD Director's Office or sage-grouse coordinator will be necessary for many situations.

#### Core Area Treatments:

The following sagebrush treatment protocols are designed to ensure future habitat treatments conform to the provisions of Executive Order 2011-5, to conserve sage-grouse and prevent population declines in core habitat areas. Treatments that will NOT reduce sagebrush canopy cover to less than 15% are NOT subject to the Density/Disturbance Calculation Tool (DDCT) step prescribed below. However, such treatment proposals should still follow the other steps outlined in order to determine and document purpose and need, appropriately apply stipulations and monitor results. In northeast Wyoming core areas (Figure 1), treatments that will result in sagebrush canopy cover being reduced to less than 15% should not be conducted.

1. Determine and document the purpose and need for the treatment (adapted from Wyoming Interagency Vegetation Committee 2002):
  - A. Evaluate the juxtaposition, extent, importance and value of the sagebrush patch in the landscape (is this the only patch of sagebrush in the landscape?).
  - B. Identify the sagebrush species/subspecies/variety and assess the ecological site potential and treatment effects.
  - C. Determine the associated vegetation composition and condition (e.g. composition of desirable and non-desirable species and their response to treatment) and their contribution to wildlife habitat.
  - D. Assess site potential and resilience of the site to recover.
  - E. Assess other existing site influences (e.g., current grazing use, presence of noxious/exotic plant infestations, cumulative impacts, etc.).
  - F. Evaluate past management history of the site.
  - G. Establish post-treatment vegetation management objectives tiered to the management plan for the site.

- H. Create a baseline for short-term/long-term post-treatment monitoring of the site.
- 2. If there is justified purpose and need, then utilize the Density/Disturbance Calculation Tool (DDCT) outlined in Executive Order 2011-5 and conduct the prescribed analysis.
  - A. If the cumulative disturbance, including the proposed treatment, is less than 5% of suitable sage-grouse habitat as defined in the Executive Order, the project may proceed.
    - i. Recognize any treatment reducing sagebrush canopy cover to less than 15% will be considered disturbance for future disturbance calculations (adapted from Connelly et al. 2000a, Stiver et al. 2010).
    - ii. A project plan must be developed that considers, evaluates and appropriately applies the following stipulations:
      - 1. No treatment should occur within 0.6-mile of any occupied lek that results in less than 15% sagebrush canopy cover unless:
        - a. The proposed treatment is necessary to maintain the viability of the lek such as removing conifers or sagebrush encroaching on the lek site.
      - 2. Treatment implementation should not occur within 4-miles of any occupied lek from March 15 – June 30 (Wyoming Game and Fish Dept. 2010).
      - 3. Treatment implementation should not occur in designated and/or mapped sage-grouse winter concentration areas from November 15 – March 14 (Wyoming Game and Fish Dept. 2010).
      - 4. Avoid the use of fire to treat sagebrush in less than 12-inch precipitation zones (Beck et al 2009, Connelly et al 2000b, WAFWA, 2009).
      - 5. Control and monitor noxious and/or invasive vegetation post-treatment.
      - 6. Rest the treated area from grazing for two full growing seasons unless vegetation recovery dictates otherwise.
  - B. If the cumulative disturbance, including the proposed treatment, within the DDCT boundary, is greater than 5% of the suitable sage-grouse habitat and the goal of the treatment is to reduce sagebrush canopy cover to less than 15%, the project shall NOT proceed except when:
    - i. Acreage of treatment is reduced so cumulative disturbance does not exceed 5% of suitable habitat.
    - ii. The treatment is configured such that all treated habitat is within 60 meters of sagebrush habitat (adapted from Danvir 2002, Slater 2003, Wyoming Game and Fish Department 2003, Dahlgren et al. 2006) with 10% or greater canopy cover (Connelly et al. 2000a) and no more than 20% of



suitable sage-grouse habitat in the DDCT boundary is treated in this manner (adapted from Connelly et al. 2000a).

3. Refer to the BLM/WAFWA Sage-grouse Habitat Assessment Framework (HAF) when conducting habitat evaluations to determine the need to treat sagebrush to enhance sage-grouse habitat and when devising standardized monitoring protocols to assess the effectiveness of treatments (Stiver et al. 2010).
4. In stands with less than 15% sagebrush cover pretreatment, any proposed treatment should be designed to maintain or improve sagebrush habitat (within the limits of the ecological site).

Non-Core Area Treatments:

As is the case with industrial development outside of Core Areas, there will be greater flexibility to conduct sagebrush treatments outside of Core Areas. There can be more emphasis placed upon the habitat needs of species other than sage-grouse.

1. Determine and document the purpose and need for the treatment (adapted from Wyoming Interagency Vegetation Committee 2002):
  - A. Evaluate the juxtaposition, extent, importance and value of this sagebrush patch in the landscape (is this the only patch of sagebrush in the landscape?).
  - B. Identify the sagebrush species/subspecies/variety and understand the ecology and treatment effects.
  - C. Determine the associated vegetation composition and condition (e.g. composition of desirable and non-desirable species and their response to treatment) and their effects on wildlife habitat.
  - D. Consider site potential and resilience of the site to recover.
  - E. Assess the existence of other potential site influences (e.g., current grazing use, presence of noxious/exotic plant infestations, cumulative impacts, etc.).
  - F. Evaluate past management history of the site.
  - G. Establish post-treatment vegetation management objectives tied to the future management plan.
  - H. Create a baseline for short-term/long-term post-treatment monitoring of the site.
2. Conduct the treatment.
3. Rest the treated area from grazing for two full growing seasons unless vegetation recovery dictates otherwise.
4. Monitor post treatment habitat conditions and grazing/browsing by ungulates to determine success.
5. Monitor and control noxious and/or invasive vegetation post-treatment.

Exceptions for treatments in Core Areas will be considered only if it can be demonstrated by previous research the activity will not cause declines in sage-grouse populations. The demonstration must be based on monitoring data collected and analyzed with accepted scientific based techniques.

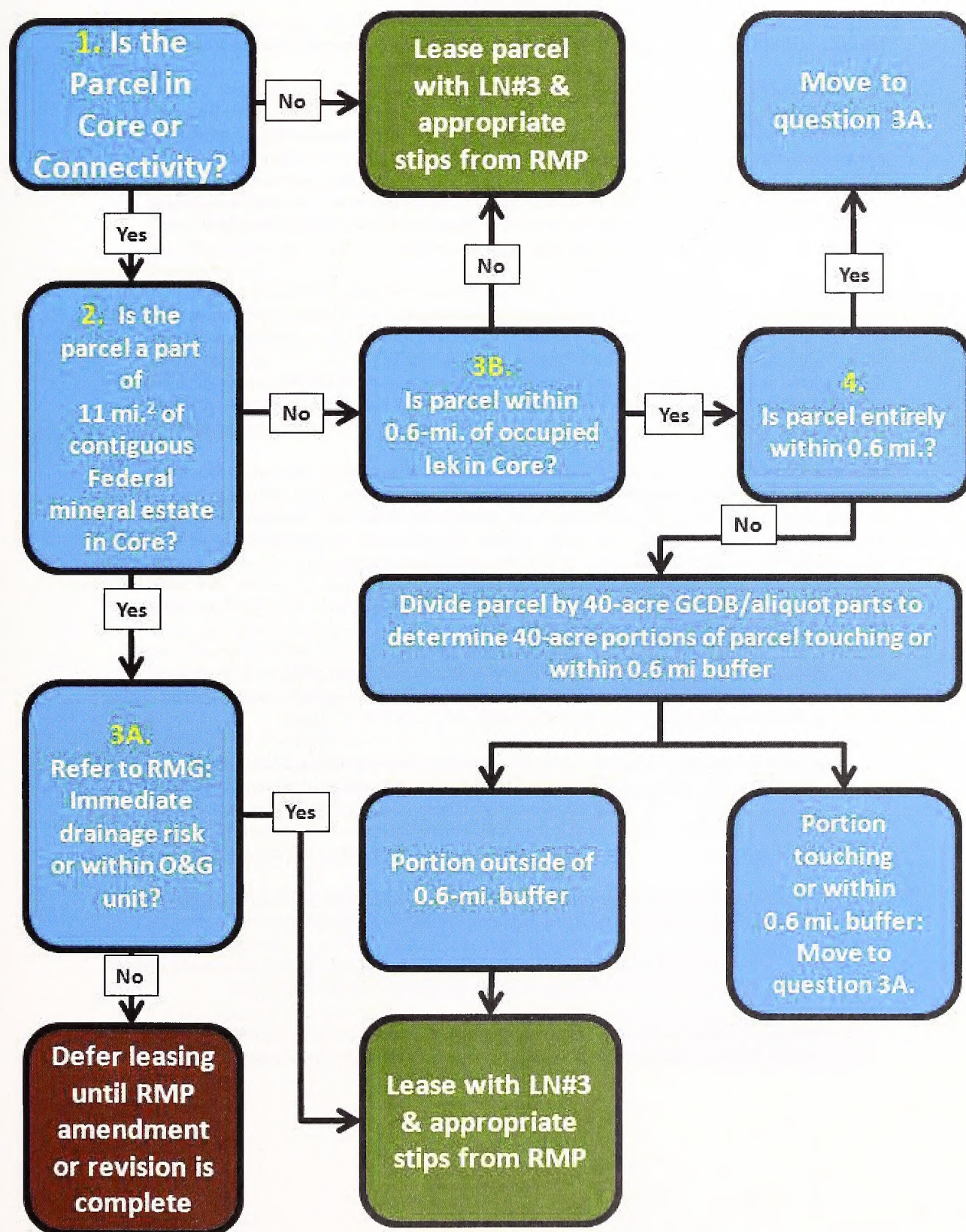




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Attachment 7**Greater Sage-Grouse Lease Screen**



**ATTACHMENT 8 –**

Management of Livestock Grazing in Sage-Grouse Habitats on Lands Administered by the Bureau of  
Land Management in Wyoming  
January 25, 2012

This policy addresses the need for guidance on management of livestock grazing to achieve sage-grouse habitat objectives on lands administered by the Bureau of Land Management (BLM) in Wyoming. It provides a basic framework for using Ecological Site Descriptions (ESD) and their State-and-Transition (S&T) models to identify grazing practices that are compatible with those objectives. It also provides concepts for annual management of residual cover to maintain or promote desirable plant communities and sage-grouse habitats.

This policy was written using information in the publication, "Grazing Influence, Objective Development, and Management in Wyoming's Greater Sage-Grouse Habitat" (Cagney et al., 2010). It is very important to read and understand that document in its context in order to effectively implement this policy. The intent is for District and Field Offices to apply the concepts in that document but in a manner that accommodates for biotic and abiotic differences between planning areas. As a result, this policy was written to provide a basic and broad approach that can be further refined as needed at the field level.

Please be aware that the Bureau is near completion of the Interagency Ecological Site Handbook for Rangelands. Part of the handbook's purpose is to implement a standardized system to define and describe rangeland ecological sites that are more efficient and defensible. Some ESD terms and concepts used in this policy (e.g. community phases) were therefore taken from that draft handbook when applicable, instead of the Cagney et al. (2010) publication, to provide a more consistent approach within Bureau guidance.

**Steps for Application of Ecological Site Descriptions**

1. Assess availability of soil surveys, Ecological Site Descriptions (ESD), and State-and-Transition (S&T) model data for the planning area. If data is lacking, do not proceed further and work on mapping soils and/or developing ESDs and S&T models.
2. Identify the predominant ESDs within the planning area that have states within the S&T model that provide sage grouse Seasonal Habitat Components (i.e., Across the Landscape, Lekking, Nesting, Early Brood-Rearing, Late Brood Rearing, Fall, Winter, and/or Migration). Include less common ESDs only if they play a significant role for sage grouse habitat in the planning area.
3. Identify the current state and community phase if available in the S&T model of the selected ESDs and include the acreage it encompasses within the planning area.
4. Identify the Seasonal Habitat Component(s) that the current state and its community phase provide for sage-grouse and whether it meets the desired habitat objective(s).
5. If there are multiple Seasonal Habitat Components for a state and its community phase, identify the one or ones that will be the focus, around which to develop a grazing

management strategy. Assess the capability and potential to manage for those sage-grouse Seasonal Habitat Components.

6. Where a less than optimal state and community phase exists for sage grouse, identify the management approach that needed for a transition/restoration pathway to a more desirable state or community phase within that state.
7. In the S&T model identify transition(s), restoration pathway(s), and/or community pathway(s) under various grazing strategies, disturbances (e.g. fire), or other activities. Consider the timing, intensity, duration, frequency, and sequence of the grazing activity and how that impacts the identified states and/or community phases within each state. A description of both long- and short-term impacts should be included. Consider other affects as well (e.g., drought, insects, non-livestock grazing/browsing, plant disease, climate/weather, and etc.) that would affect the grazing strategies if they have not already been identified in the S&T model.
8. When designing grazing management strategies for multiple identified states and community phases in a planning area, prioritize those that are at risk of transitioning to an undesirable state/community phase for sage-grouse.
9. Cross-reference your sage-grouse habitat management objectives with your selected grazing strategy using the S&T model to predict whether the expected outcome will be desirable. The strategy must provide or accommodate a restoration/community pathway if the desired state/community pathway is not present.
10. If the restoration/community pathway cannot be attained through grazing management alone, select a strategy that will maintain the current state/community phase until the needed inputs are available to reinitiate site progression. Once site progression is reinitiated toward a desirable state/community phase (e.g. prescribed fire), the grazing strategy must work in harmony with the pathway. If not, the strategy should be changed, which may include resting the area until it is suitable for a grazing strategy to resume.
11. Follow-up by collecting monitoring information (e.g., livestock actual use, utilization, vegetation condition/trend, climate, and etc.) and conducting land health assessments to verify that sage-grouse habitat objectives are being met or whether a new grazing management strategy is needed.

#### Residual Cover Management Concepts

- “Grazing influence on sage-grouse habitat is a function of both long-term management to promote desirable plant communities and annual management of the standing crop to provide cover for sage-grouse habitat. With few exceptions, leaving adequate residual herbage will provide for both long- and short-term objectives (Cagney et al., 2010).”
- It is important that the grazing strategy allow plant growth requirements to be achieved for the desired plant community identified within a state and community phase. Long-term management for plant health includes proper timing (e.g. allowing for critical growth periods



and recovery from herbivory) and intensity (e.g. utilization, providing adequate litter/residual cover, and etc.). This should include giving consideration to duration, frequency, and sequence as well.

- Stock the pasture/allotment to achieve prescribed utilization goals, which must be applied to locations preferred by livestock. Do not include areas in the immediate vicinity to traditionally high concentration areas such as water troughs that would prevent a reasonable assessment of utilization.
- Identify riparian and upland plant growth seasons (see Figure 14, page 25 of Cagney et al., 2010) to assist in proper timing of grazing to meet plant growth requirements and plant community objectives. This will help provide the foundation for a sound grazing management strategy. Describe the timing, intensity, and the grazing strategy analysis for each plant growth season (i.e. Winter, Early, Critical Growing, and Late).
- Evaluate and manage for sufficient standing crop/residual cover to meet site specific sage-grouse habitat objectives (e.g. hiding cover, nesting, etc.) specific to that site in the planning area.
- Consider existing and/or proposed range improvement projects (e.g. fences, water troughs, etc.) and how it affects grazing patterns that directly or indirectly affect sage-grouse habitats. Examples include analyzing how the project would change the grazing intensity of an area or if it would fragment sage-grouse habitat. Consider if or how that impact could be mitigated (e.g. bird ladders, visibility markers for fences, and etc.).
- Work to address and prevent overuse areas by managing for good livestock distribution.
- Monitor, assess, and evaluate the grazing management strategy and whether objectives are being met. Monitoring would include vegetation trend/condition, actual use reports, utilization, and climate data.

State and Transition Model Component Terms (Draft - Interagency Ecological Site Handbook for Rangelands, 2010, p. 17-18)

*State:* A suite of plant community phases that interact with the environment to produce a characteristic composition of plant species, functional and structural groups, soil functions, and a characteristic range of variability. The state is defined with reference to plant community phases, dynamic soil properties, and animal populations that are linked to one another via feedback mechanisms. Alternative states differ in the operation of one or more *primary ecological processes* including the hydrologic (water) cycle, nutrient cycle, the process of energy capture and transformation (energy flow). Each state has distinct benefits and values depending upon the intended use, products, and ecosystem services desired from the site.

*Transitions:* Transitions describe the drivers and mechanisms of shifts between states. Transition is the trajectory of system change between states that will not cease before the establishment of a new state. A transition can be triggered by natural events (climatic events or fire), management actions (grazing, farming, burning, etc.) or both. Because alternative states are persistent and exhibit characteristic feedbacks and primary ecological processes, transitions may be irreversible, or at least

do not reverse themselves within management timeframes (i.e. several decades). The trajectories of change between states which alter ecological structure and function require intensive management practices to reverse. Transitions may also occur quickly as in the case of catastrophic events like fire or flood, or a hurricane event. Thus, in practical terms, changes that warrant the use of accelerating practices and restoration technologies to return to the previous state can be considered to be transitions.

*Restoration pathways:* Restoration pathways describe the environmental conditions and practices that are required to recover a state that has undergone a transition. Remediation is included in this definition. Environmental conditions, for example, may include relatively high rainfall years. Practices include significant management inputs (e.g., chemical/mechanical treatments or planting) coupled to facilitating and management practices (e.g., fencing and grazing management prescriptions).

*Community phases:* Community phases are unique assemblages of plants and associated dynamic soil property levels that can occur over time within a state. In states that attain equilibrium, community phases are equivalent to seral or successional stages that may undergo orderly changes in response to natural disturbance, management, and succession. In states that do not attain equilibrium, community phases may shift from one to the other in complex ways depending on the interactions of climate, natural disturbance, and management. Community phases included in a single state will typically have similar floristics or functional groups, but may differ in dominant or subordinate species.

*Community pathways:* Community pathways describe the causes of shifts between community phases. In contrast to alternative states, shifts in community phases are reversible due to succession, short-term climatic variation, and facilitating practices such as grazing management. Collectively, the community phases represent the range of variation within a state, including conditions that place the state at risk of a transition.

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**ATTACHMENT 9 –  
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**APPENDIX L:**

**GOVERNMENT-TO-GOVERNMENT AND  
NATIONAL HISTORIC PRESERVATION ACT SECTION 106 CONSULTATIONS**



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**APPENDIX L:****GOVERNMENT-TO-GOVERNMENT AND  
NATIONAL HISTORIC PRESERVATION ACT SECTION 106 CONSULTATIONS****L.1 INTRODUCTION**

This appendix presents the correspondence pertaining to government-to-government and National Historic Preservation Act of 1966 (NHPA) Section 106 consultation for the Oil Shale and Tar Sands Programmatic Environmental Impact Statement (OSTS PEIS). Section L.2 provides copies of correspondence with all the tribes, and Section 3 presents copies of correspondence with interested parties.

**L.2 GOVERNMENT-TO-GOVERNMENT CONSULTATION**

As detailed in Chapter 7 of the PEIS, the U.S. Department of the Interior, Bureau of Land Management (BLM) coordinates and consults with federally recognized tribes whose interests might be directly and substantially affected by activities on public lands. It strives to provide the Indian tribes with sufficient opportunities for productive participation in BLM planning and resource management decision-making. In addition, Section 106 of the NHPA requires federal agencies to consult with Indian tribes on undertakings on tribal lands and on historic properties of significance to the tribes that may be affected by an undertaking (Title 36, Part 800.2 (c)(2) of the *Code of Federal Regulations* (36 CFR 800.2 (c)(2))). BLM Manual 8120 (BLM 2004a) and Handbook H-8120-1 (BLM 2004b) provide guidance for Native American consultations.

In July 2011, the BLM distributed a letter to 25 tribes notifying them of its intention to take a fresh look at land use allocation decision made in 2008 regarding the management of oil shale and tar sands resources. The BLM has followed up with additional letters, e-mails, phone calls, and meetings for tribes who have indicated that they wish to continue government-to-government consultation or have cooperating agency status. Once the Draft PEIS was completed (BLM 2012), a second mailing was sent to all federally recognized tribes with interests in the area under consideration. Follow-up meetings and discussions occurred after the issuance of the Draft PEIS.

To date, eight tribes have responded by letter, e-mail, or telephone, or have met with local BLM personnel. Two tribes, The Paiute Indian Tribe of Utah and Pueblo of Santa Clara, have both indicated through the Tribal Response Form that they do not require consultation at this time. One tribe, the Eastern Shoshone, has indicated interest in becoming a Cooperating Agency; however, they have not signed the required Memorandum of Understanding (MOU) to gain that status. The Hopi and the Navajo Mountain Chapter of the Navajo Nation, indicated through their response forms that they would like to meet to discuss the project. Both tribes have been contacted by the BLM and consultation is ongoing. The Ute Mountain Ute Tribe, The Ute Indian Tribe, and the Southern Ute Indian Tribe, have met with the BLM to further discuss the project, and consultation is ongoing. No response was received from the remaining 17 tribes.



A summary of tribal consultation is provided below in Tables L-1 and L-2. Copies of correspondence can be viewed in Attachment 1.

Consultation opportunities for all federally recognized tribes will continue to be provided. In addition, the BLM will continue to implement government-to-government consultation on a case-by-case basis for any oil shale and tar sands lease application and development projects.

**TABLE L-1 Index of Agency and Tribal Government Consultation**

Date	Originating Agency/ Tribal Government	Recipient Organization	Page
<b>Multiple Tribes</b>			
July 2011	BLM	Tribal leaders (see distribution list)	L-34
January and February 2012	BLM	Tribal leaders (see distribution list)	L-39
<b>Eastern Shoshone Tribe of the Wind River Reservation</b>			
April 11, 2012	Helen Hankins, BLM	Wilfred Ferris, THPO	L-47
<b>Hopi</b>			
July 29, 2011	J.T. Morgart, Legal Researcher	BLM	L-49
<b>Navajo Nation-Navajo Mountain Chapter</b>			
July 29, 2011	Alex Bitsinnie, President	BLM	L-50
<b>Paiute Indian Tribe of Utah</b>			
August 5, 2011	Dorena Martineau, Cultural Resources Coordinator	BLM	L-51
<b>Pueblo of Santa Clara</b>			
August 22, 2011	Ben Chavarria, NAGPRA contact	BLM	L-52
<b>Ute Indian Tribe of the Uintah and Ouray Reservation</b>			
April 11, 2012	Helen Hankins, BLM	Irene Cueh, Chairwoman and Betsy Chapoose	L-53
<b>Ute Mountain Ute Tribe</b>			
April 11, 2012	Helen Hankins, BLM	Terry Knight, NAGPRA Representative	L-55

Abbreviations: BLM = Bureau of Land Management; NAGPRA = Native American Graves Protection and Repatriation Act; THPO = Tribal Preservation Officer.

TABLE L-2 Summary of Consultation with Federally Recognized Native American Tribes

Organization	BLM Contact	Tribal Response
Eastern Shoshone Tribe of the Wind River Reservation	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	July 2011—Wes Martel contacted Sherri Thompson to request Cooperating Agency status for the Eastern Shoshone Business Council.
	Aug. 8, 2011—Sherri Thompson sent Draft MOU for cooperating agency status sent to Wes Martel.	Sept. 28, 2011—Mr. Martel responded that he is still interested and requested time line information. Information on the time line was sent as well as a Draft Cooperating Agency MOU. The MOU was never signed and returned.
	Sept. 26, 2011—Sherri Thompson sent a reminder to Mr. Martel to sign agreement before he could receive materials as a cooperator.	July 25, 2012—Wilfred Ferris cancelled the conference call. The call was not rescheduled.
	Sept. 28, 2011—Sherri Thompson responded, explaining the time line for distribution of the preliminary draft and signature requirement.	July 31, 2012—Wilfred Ferris called Sherri Thompson to tell her that he would be unable to attend the August 1, 2012, meeting with the BLM and Ute Mountain Ute to discuss wickiup sites, because something else came up. Wilfred told Sherri that he would call back on August 2, 2012, but Sherri never received a phone call.
	Jan. 20 2012—Letter from the BLM Wyoming State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
	April 3, 2012—E-mail from Ranel Capron inviting Eastern Shoshone to attend a consultation meeting with the Colorado BLM and other tribes on May 2–3, 2012, to discuss protection of wickiup sites.	
	April 11, 2012—Letter from the BLM inviting Eastern Shoshone to attend a consultation meeting with the Colorado BLM and other tribes on May 2–3, 2012, to discuss protection of wickiup sites.	



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Eastern Shoshone Tribe of the Wind River Reservation (Cont.)	April 18, 2012—E-mail from Daniel Haas to Wilfred Ferris, inquiring if Eastern Shoshone will attend May 2 meeting and if further consultation is needed	
	July 24, 2012—E-mail from Sherri Thompson to Wilfred Ferris transmitting PowerPoint about project for conference call to be held on July 25.	
	August 1, 2012—BLM held a field visit for the Eastern Shoshone and Ute Mountain Ute to visit and discuss protection of wickiup sites.	
	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	July 29, 2011—John T. Morgart, Legal Researcher, returned tribal response form. Hopi have concerns to discuss and would like to be contacted.
Hopi Tribal Council	Aug. 16, 2011—E-mail to Terry Morgart inquiring about meeting request and offering additional information.  Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	

TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Kaibab Paiute Tribal Council	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Nation	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Nation, Aneth Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Navajo Nation, Dennehotso Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Nation, Historic Preservation Dept.	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Nation, Mexican Water Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	

TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Navajo Nation, Navajo Mountain Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	July 29, 2011—Alex Bitsinnie, Chapter President, returned tribal response form. Would like to be contacted to discuss information or concerns.
	Aug. 16, 2011—E-mail from Byron Loosle inquiring about meeting and offering additional information.	
	Aug., 17, 2011—E-mail from Byron Loosle with the July 2011 letter.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Nation, Oljato Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Navajo Nation, Red Mesa Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Nation, Teec Nos Pos Chapter	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Navajo Utah Commission	July 2011—Copied on letter from BLM State Office to the Navajo Nation giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	

TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Northern Arapaho Business Council	<p>July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.</p> <p>Jan. 20 2012—Letter from the Wyoming State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.</p>	
Northwestern Band of Shoshone Nation	<p>July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.</p> <p>Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.</p>	
Paiute Indian Tribe of Utah Tribal Council	<p>July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.</p> <p>Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.</p>	<p>Aug. 5, 2011—Dorena Martineau, Paiute Indian Tribe of Utah Cultural Resources, returned tribal response form. They have received sufficient information and do not require consultation at this time.</p>



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Pueblo of Laguna	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Pueblo of Nambe	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Pueblo of Santa Clara	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	Aug. 22, 2011—Ben Chavarria, Land and Cultural Resources, returned the tribal response form. They have received sufficient information and do not require consultation at this time.
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	

TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Pueblo of Zia	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	
	Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	
Southern Ute Tribe	June 14, 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	April 4, 2012—E-mail from Alden Naranjo to Sherri Thompson, indicating he would like to attend the site visit, but cannot make the trip May 2–3. Asked if they could schedule another trip.
	Feb. 2, 2012—Letter from the Colorado State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	June 6, 2012—Alden Naranjo attended consultation meeting with the Kristen Bowen, Kent Walter, Daniel Haas, and Sherri Thompson. He would like to see a 200–500 m avoidance buffer on all sides of the project, although he understands that would not be possible in all cases.
	April 2, 2012—Letter from Sherri Thompson inviting Southern Ute to attend a consultation meeting with Colorado BLM and other tribes on May 2–3, 2012, to discuss protection of wickiup sites.	
	April 25, 2012—E-mail from Sherri Thompson to Alan Naranjo with information on a June 6, 2012, consultation meeting among the BLM, Southern Ute Tribe, Ute Mountain Ute, and Eastern Shoshone to discuss identification and protection of wickiup sites.	



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Southern Ute Tribe (Cont.)	June 6, 2012- Daniel Haas, Kristen Bowen, Kent Walter, and Sherri Thompson met with Alden Naranjo.	
	June 26, 2012—Sherri Thompson called Alden Naranjo to inquire if Alden was attending the July 18, 2012, consultation trip. Sherri was unable to get a hold of Alden.	
	July 18, 2012—E-mail from Sherri Thompson, BLM, to Alden Naranjo asking if there were any concerns he had about wickiups and if there were future mitigation measures he would like to see.	
Ute Indian Tribe of the Uintah and Ouray Reservation	June 14, 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.	Sept. 21, 2011—Sherri Thompson received a call from Valentino Jones. She explained to him that the BLM is taking a fresh look at the decisions made in the 2008 Oil Shale and Tar Sands PEIS and that we wanted to give the tribe the opportunity to confirm that they were still interested in leasing tribal lands for oil shale and tar sands resources on the reservation. Mr. Jones said he would have to “run it up the flagpole” and he will get back to the BLM.
	Sept. 19, 2011—Sherri Thompson called the Northern Ute Indian Tribe to ask them if they still would like to lease their lands for oil shale and tar sands within the reservation.	May 2, 2012—Betsy Chapoose attended consultation meeting. Clifford could not attend, but indicated he would like an on-site meeting in June. She informed Byron Loosle, BLM, that the tribe tends to look at the landscape as a whole, including plants and animals. She would prefer to look proactively at an area instead of on a project by-project basis.
	Sept. 19, 2011—Sherri Thompson left a message with Bruce Vergies of the Energy and Minerals Department.	
	Sept. 20, 2011—Sherri Thompson left a message with Manual Myore of the Energy and Minerals Department	May 30, 2012—Clifford was appreciative of being invited out. His main concerns are visual impacts on wickiup sites and long-term reclamation.
	Oct. 3, 2011—Sherri Thompson e-mailed Valentino Jones seeking confirmation of the Utes’ desire for development of split estate lands.	

TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Ute Indian Tribe of the Uintah and Ouray Reservation (Cont.)	<p>Feb. 02, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.</p> <p>April 11, 2012—Letter from the BLM inviting Ute Indian Tribe to attend a consultation meeting with the Colorado BLM and other tribes on May 2–3, 2012, to discuss protection of wickiup sites.</p> <p>May 2, 2012—Byron Loosle and Daniel Haas, BLM, met with Betsy Chapoose.</p> <p>May 30, 2012—Kent Walter and Kristen Bowen met with Clifford Duncan.</p> <p>June 4, 2012—Sherri Thompson called Irene Cuch at the suggestion of Betsy Chapoose, to personally tell her about the OSTs PEIS. Left message with the secretary. The secretary said it may be a couple of weeks before Irene can get back to her.</p> <p>June 28, 2012—Sherri Thompson left message for Irene Cuch.</p> <p>July 16, 2012—E-mail from Sherri Thompson to Betsy Chapoose asking if there are any further concerns or potential future mitigation suggestions Colorado, Utah, and Wyoming.</p>	



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Ute Indian Tribe of the Uintah and Ouray Reservation (Cont.)	<p>April 11, 2012—Letter from the BLM inviting Ute Indian Tribe to attend a consultation meeting with the Colorado BLM and other tribes on May 2–3, 2012, to discuss protection of wickiup sites.</p> <p>May 2, 2012—Byron Loosle and Daniel Haas, BLM, met with Betsy Chapoose.</p> <p>May 30, 2012—Kent Walter and Kristen Bowen met with Clifford Duncan.</p> <p>June 4, 2012—Sherri Thompson called Irene Cuch at the suggestion of Betsy Chapoose, to personally tell her about the OSTs PEIS. Left message with the secretary. The secretary said it may be a couple of weeks before Irene can get back to her.</p> <p>June 28, 2012—Sherri Thompson left message for Irene Cuch.</p> <p>July 16, 2012—E-mail from Sherri Thompson to Betsy Chapoose asking if there are any further concerns or potential future mitigation suggestions</p> <p>August 7, 2012—Sherri Thompson left a voicemail for Irene Cuch.</p>	
Ute Mountain Ute Tribe	<p>June 14, 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.</p>	<p>March 20, 2012—Representatives for the Ute Mountain Ute indicated they would like to see the wickiup village near Yellow Creek excluded from potential leasing and development. Requested meeting between three Ute Tribes and the Eastern Shoshone to discuss protection of wickiup sites.</p>

TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Ute Mountain Ute Tribe (Cont.)	<p>Feb. 2, 2012- Letter from the Colorado State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.</p> <p>March 21, 2012—Dan Haas and Sherri Thompson, met with Ute Mountain Ute.</p> <p>April 11, 2012—Letter from the BLM inviting Ute Mountain Ute Indian Tribe to attend a consultation meeting with the Colorado BLM and other tribes on May 2–3, 2012, to discuss protection of wickiup sites.</p> <p>April 25, 2012—E-mail from Sherri Thompson to Lynn Hartman with information on a June 6, 2012, consultation meeting among the BLM, Southern Ute Tribe, Ute Mountain, and Eastern Shoshone to discuss identification and protection of wickiup sites.</p> <p>June 15, 2012—Daniel Haas and Sherri Thompson, pushed the meeting back to July 18.</p> <p>July 2, 2012—Dan Haas told Lynn Hartman that he would send her information on the project since she and Terry could not attend.</p> <p>July 12, 2012—E-mail from Sherri Thompson to Lynn Hartmann with meeting details for an August 1, 2012, meeting.</p>	<p>June 15, 2012—Lynn Hartman requested the July 17 meeting be changed to the 18th.</p> <p>July 2, 2012—E-mail from Lynn Hartman indicating that she and Terry Knight were not able to attend the July 2 meeting. There were no other days that would work for a meeting and the meeting was cancelled.</p> <p>Aug 1, 2012—Terry Knight expressed his concern with the pressure of energy development in the area and its impacts on wildlife and wild herds. The wickiup sites are hunting related, and are there because of the wildlife. If the wildlife is cared for, the wickiup sites will be as well. The Ute used wickiups as permanent structures to protect them during bad and cold weather; temporary brush structures were used at other times. Terry also expressed an interest in brush fences as they were used as game drives for elk and wild horses.</p> <p>Lynn Hartmann stated that she does not see a need to consult on projects that have already been surveyed unless cultural resources are affected. The Ute Mountain Ute believe that the BLM should stay at least 600 yards away from ACECs. They would like to see an annual work plan describing projects, would like information on the Skull Creek WSA, and are interested in how ruins and wickiups are being protected from grazing.</p>



TABLE L-2 (Cont.)

Organization	BLM Contact	Tribal Response
Ute Mountain Ute Tribe (Cont.)	Aug 1, 2012—BLM held field visit for the Ute Mountain Ute and Eastern Shoshone to visit and discuss protection of wickiup sites. Kent Walter, Kristen Bowen, and Daniel Haas met with Lynn Hartmann and Terry Knight.	
White Mesa Ute Band	July 2011—Letter from BLM State Office giving notice of the PEIS and inviting to become a cooperating agency.  Jan. 25, 2012—Letter from the Utah State Office transmitting the Draft PEIS and inviting consultation and participation. Letter also described public open house meetings that would be held in Colorado, Utah, and Wyoming.	

### **L.3 SECTION 106 CONSULTATION**

This section presents the interactions that occurred as part of the NHPA Section 106 review for the PEIS. A brief overview of the consultation process with State Historic Preservation Officers (SHPOs), the Advisory Council of Historic Preservation (ACHP), and interested parties is provided below.

#### **L.3.1 State Historic Preservation Officers**

In September 2011, the BLM distributed a letter to the Colorado, Utah, and Wyoming SHPOs, notifying them of BLM's intention to take a fresh look at land use allocation decisions made in 2008 regarding the management of oil shale and tar sands resources. The letter invited SHPOs to participate on issues related to Section 106 of the NHPA and included maps of the development area as well as a list of interested parties who received a copy of the letter.

The Colorado SHPO responded to this letter on October 31, 2011. The Colorado SHPO indicated he was unsure of the request as presented in the September 22, 2011, letter. He expressed that he would like to see a historic context study completed and inquired as to the status of the new Programmatic Agreement. The Colorado SHPO requested a conference call or meeting to further discuss the project. The BLM met with the Colorado SHPO on April 11, 2012.

In January and February 2012, the BLM distributed the Draft PEIS, as well as a notification letter inviting the SHPOs to submit comments and concerns. The letter outlined the comment period deadline, provided instructions on how to comment, and provided information on upcoming public meetings.

The Utah SHPO responded by letter on February 23, 2012 indicating that her letter "served as comment on the determinations made within the consultation process."

In April 2012, the BLM followed up with the Colorado and Wyoming SHPOs in order to determine if either office had any comments or concerns related to the Draft PEIS. The Wyoming office indicated it was concerned about the language used to describe eligibility of trails to the *National Register*. The BLM met with the Colorado SHPO on April 11, 2012, to further discuss the OSTs project. A presentation covering the different alternatives, PEIS schedule, and dates of public open house meetings was given. The Colorado SHPO sent a letter in May recommending that cultural resource surveys be completed for individual site-specific development plans.

In August and September 2012, the BLM sent letters to the Colorado, Wyoming, and Utah SHPOs notifying them of BLM's determination of "no historic properties affected." The letter provided a summary of the undertaking as well as a summary of Section 106, tribal, and public consultation efforts. The letter also asked for SHPO concurrence with BLM's decision. As of this writing, the Wyoming and Colorado SHPOs have concurred with BLM's findings.



**TABLE L-3 Index of Consultation with State Historic Preservation Officers**

Date	Originating Organization/Agency	Recipient Organization/Agency	Page No.
<b>Colorado, Utah, and Wyoming SHPOs</b>			
September 2011	BLM	Edward Nichols, Colorado SHPO Lori Hunsaker, Utah SHPO Mary Hopkins, Wyoming SHPO	L-58
January and February 2012	BLM	Edward Nichols, Colorado SHPO Lori Hunsaker, Utah SHPO Mary Hopkins, Wyoming SHPO	L-61
<b>Colorado SHPO</b>			
October 31, 2011	Edward Nichols	Dan Haas, BLM	L-64
May 4, 2012	Edward Nichols	BLM	L-65
Sept. 7, 2012	Helen Hankins, BLM	Edward Nichols	L-67
Sept. 26, 2012	Edward Nichols	Helen Hankins	L-73
<b>Utah SHPO</b>			
Feb. 23, 2012	Lori Hunsaker	BLM	L-75
Sept. 10, 2012	Juan Palma, BLM	Martin Wilson	L-76
<b>Wyoming SHPO</b>			
Aug. 30, 2012	Donald Simpson, BLM	Mary Hopkins	L-80
Sept. 21, 2012	Richard Currit	Donald Simpson, BLM	L-85

A summary of SHPO consultation is provided in Tables L-3 and L-4. Copies of correspondence can be viewed in Attachment 2.

TABLE L-4 Summary of Consultation with State Historic Preservation Officers

Organization	BLM Contact	Organization Response
Colorado State Historic Preservation Office	Sept. 22, 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	October 31, 2011—Letter to Daniel Haas in response to Sept. 2011 letter. The SHPO indicated he is unsure of the request as presented in the September 22, 2011 letter. He believes that a historic context study would draw together the archaeological data in a meaningful and critical synthesis and would provide both offices with a guide in future consultations. The SHPO also inquired as to if the comments sent in January 2009 were incorporated into the new Programmatic Agreement (PA) and inquired as to the status of the new PA. The SHPO requested a conference call or meeting.
	February 02, 2012—Packet from the BLM containing notification letter and the Draft PEIS.	May 4, 2012—Letter thanking BLM staff for meeting on April 11, 2012. The letter indicates the SHPO expects consultation under Section 106 will occur and recommends that a cultural resource survey be completed for individual site-specific development plans.
	March 20, 2012—E-mail from the BLM requesting a meeting with the SHPO, asking for comments on the Draft PEIS, informing the SHPO of consultation with other parties. Consultation summary was attached.	September 26, 2012—Letter from Colorado SHPO notifying the BLM that the SHPO has concurred with BLM’s findings.
	April. 11, 2012—The BLM met with the Colorado SHPO. A presentation was given on the OSTs project.	
	September 7, 2012—Letter from the BLM notifying the SHPO of BLM’s determination of “no historic properties affected.” The letter summarized consultation efforts and asked for SHPO concurrence with BLM’s determination.	



TABLE L-4 (Cont.)

Organization	BLM Contact	Organization Response
Utah State Historic Preservation Office	Sept. 29, 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section-106-related issues.	Feb. 23, 2012—Letter acknowledging notification of the Draft PEIS.
	Jan. 25, 2012—Packet from the BLM containing notification letter and Draft PEIS.	
	September 10, 2012—Letter from the BLM notifying the SHPO of BLM's determination of "no historic properties affected." The letter summarized consultation efforts and asked for SHPO concurrence with BLM's determination.	
Wyoming State Historic Preservation Office	Sept. 27, 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	March 8, 2012—E-mail from Richard Currit, State Archaeologist, expressing concern about the language used to describe trails and indicating the Governor's office is supporting the No Action Alternative.
	Jan. 20, 2012—Packet from BLM containing notification letter and Draft PEIS.	September 21, 2012—Letter from Wyoming SHPO notifying the BLM that the SHPO has concurred with the BLM's findings.
	March 7, 2012—E-mail from Ranel Capron inquiring if there are any comments/concerns on Draft PEIS.	
	August 30, 2012—Letter from the BLM notifying the SHPO of BLM's determination of "no historic properties affected." The letter summarized consultation efforts and asked for SHPO concurrence with BLM's determination.	

L.3.2 Advisory Council on Historic Preservation

On March 30, 2012, the BLM sent a letter to the ACHP describing its intention to take a fresh look at land use allocation decisions made in 2008 regarding the management of oil shale and tar sands resources. The letter provided a background description of the 2008 project, a description of the planning area and current action, and informed the ACHP of the BLM’s most recent actions to meet its responsibilities under Section 106. The letter also invited the ACHP to participate in consultation on issues related to Section 106 of the NHPA and included maps of the development area.

The ACHP responded on July 17, 2012, acknowledging the BLM’s decision. The ACHP indicated that it continues to believe the most appropriate course of action would be the execution of a Programmatic Agreement. The ACHP indicated that the BLM’s efforts to identify historic properties is a proactive step, and the ACHP looks forward to working with the BLM when Section 106 consultation is initiated for site-specific projects.

A summary of ACHP consultation is provided below in Tables L-5 and L-6. Copies of correspondence can be viewed in Attachment 3.

TABLE L-5 Index of Consultation with the Advisory Council on Historic Preservation

Date	Originating Organization/ Agency	Recipient Organization/Agency	Page No.
<b>Advisory Council On Historic Preservation</b>			
March 30, 2012	Michael Nedd, BLM	Reid Nelson, ACHP	L-87
July 17, 2012	Reid Nelson, ACHP	Michael Nedd, BLM	L-94



**TABLE L-6 Summary of Consultation with the Advisory Council on Historic Preservation**

Organization	BLM Contact	Organization Response
Advisory Council on Historic Preservation	<p>March 30, 2012— Mike Nedd, BLM, sent a letter to the ACHP describing the BLM’s intention to take a fresh look at land use allocation decisions made in 2008 regarding the management of oil shale and tar sands resources. The letter provided a background description of the 2008 project and a description of the current action and planning area. The letter informed the ACHP that the BLM sees its Section 106 responsibilities proceeding in accordance with three stages of the decision-making process regarding the potential leasing and development of oil shale and tar sands resources which include: (1) land use amendment process to determine lands available to OSTs development, (2) BLM’s consideration of lease applications, and (3) BLM’s consideration of site-specific plans of development for leased areas. The letter also informed the ACHP that the BLM had initiated tribal consultation and updated the Class I Cultural Resources Overview. The BLM had not identified any effects to historic properties as a result of the undertaking; however, they indicated that consultation was not complete and that they would make a determination of effects after reviewing all available information. The letter invited the ACHP to participate in consultation on issues related to Section 106 of the NHPA and included maps of the development area.</p>	<p>July 17, 2012—Letter in response to the March 2012 letter. The ACHP states that it continues to believe the most appropriate course of action would be to execute a Programmatic Agreement that would cover BLM’s decisions from the upcoming decision through the consideration of site-specific plans. The ACHP acknowledges BLM’s decision that no historic properties will be affected. The ACHP understands that the BLM has conducted identification efforts to identify historic properties and that these efforts will inform the decision to possibly limit lands available for leasing. The ACHP looks forward to working with the BLM when Section 106 is initiated for individual lease applications and site-specific plans.</p>

### **L.3.3 Interested Parties**

On October 1, 2011, the BLM distributed a letter to 28 interested parties notifying them of the BLM's intention to take a fresh look at land use allocation decisions made in 2008 regarding the management of oil shale and tar sands resources. The letter included maps of the development area and invited them to participate on issues related to Section 106 of the NHPA.

Six organizations accepted the invitation to consult: Alliance for Historic Wyoming (AHW); Biodiversity Conservation Alliance; Colorado Plateau Archaeological Society; Dominquez Archaeological Research Group, Inc.; National Historic Trails, Intermountain Region, Salt Lake City Field Office; and the Old Spanish Trail Association, Grand Junction Local Chapter.

On January 20, 2012, the BLM distributed a packet containing the Draft PEIS and a notification letter to the six interested parties who accepted the invitation to consult. The letter invited the parties to submit comments and concerns on the Draft PEIS, outlined the comment period deadline, provided instructions on how to comment, and provided information on upcoming public meetings.

In April 2012, the AHW submitted comments on the Draft PEIS via letter. The AHW expressed concern regarding the effect of the project on water resources, historic trails, cultural sites, rock art, archaeological sites, and the small-town tourism.

The BLM followed up by phone with the additional five interested parties in February, March, and April 2012. The remaining parties had no comments or concerns at this time and consultation efforts are ongoing.

A summary of interested party consultation is provided below in Tables L-7 and L-8. Copies of correspondence can be viewed in Attachment 4.



**TABLE L-7 Index of Consultation with Interested Parties**

Date	Originating Organization/ Agency	Recipient Organization/Agency	Page No.
<b>Multiple Interested Parties</b>			
Oct. 1, 2011	BLM	See distribution list	L-102
Jan. 20, 2012	BLM	See distribution list	L-105
<b>Alliance for Historic Wyoming</b>			
Oct. 19, 2011	Hilery Lindmeir	Sherri Thompson, BLM	L-106
April 24, 2012	Lesley Wischmann	BLM	L-107
<b>Biodiversity Conservation Alliance</b>			
Oct. 6, 2011	Erik Molvar	Sherri Thompson, BLM	L-112
<b>Colorado Plateau Archaeological Alliance</b>			
Nov. 3, 2011	Jerry Spangler	Sherri Thompson, BLM	L-113
<b>NPS-National Historic Trails-Intermountain Region, Salt Lake City Office</b>			
Nov. 2, 2011	Lee Kreutzer	Sherri Thompson, BLM	L-114
<b>Old Spanish Trails Association-Grand Junction, Local Chapter</b>			
Oct. 11, 2011	Vicki Felmile	BLM	L-115

TABLE L-8 Summary of Consultation with Interested Parties

Organization	BLM Contact	Organization Response
Alliance for Historic Wyoming-Casper Office	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	Oct. 19, 2011—E-mail from Hilery Lindmeir indicating the Alliance for Historic Wyoming (AHW) is considering interested party status and requesting a new copy of the Wyoming map.
	Oct. 20, 2011—E-mail from Sherri Thompson with Wyoming Map. Sherri indicated she will resend hard copies.	Feb. 29, 2012—Hilery Lindmeir returned Sherri Thompson’s phone call. She indicated she received the Draft PEIS package and Lesley Wischman will be putting together comments.
	Jan. 20, 2012—Packet from the BLM containing notification letter and Draft PEIS.	
	Feb. 29, 2012—Sherri left message for Hilery Lindmeir.	
	Oct. 2011—Letter from the BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	March 6, 2012—Lesley Wischmann returned Sherri Thompson’s phone call. Lesley had not had a chance to review the document. She asked how the NEPA and Section 106 process work from the oil shale perspective. She indicated her group is concerned about the “fraying of the trails” and would like a more thorough landscape analysis, especially for National Trails; particularly, the Overland and Cherokee Trails. The AHW believes the socioeconomic and recreation sections need to address Heritage Tourism, particularly along I-80. AHW will seek compensatory mitigation for cumulative effects under Section 106.
Alliance for Historic Wyoming-Laramie Office	Jan. 20, 2012—Packet from the BLM containing notification letter and Draft PEIS.	
	March 5, 2012—Sherri Thompson left voicemail for Lesley Wischmann.	April 24, 2012—Lesley Wischmann submitted comments to the Draft PEIS. The letter indicates that AHW would like to be considered an interested party at every stage. They encourage early “extensive and effective” outreach to affected tribes as early as possible. Major concerns include how development



TABLE L-8 (Cont.)

Organization	BLM Contact	Organization Response
Alliance for Historic Wyoming-Laramie Office (Cont.)		will affect water resources; the degradation of historic trails, cultural sites, rock art, and archaeological sites; and the effect of development on small-town tourism. The AHW believes that the BLM has done a poor job of evaluating Wyoming's Landscapes, and Section 106 is inadequate when dealing with Historic Trails. The letter requests off-site compensatory mitigation for cumulative effects through the NEPA process.
Biodiversity Conservation Alliance	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.  Jan. 20, 2012—Packet from the BLM containing notification letter and Draft PEIS.  Feb. 29, 2012—Sherri called Erik Molvar and spoke with his receptionist.  March 5, 2012—Sherri spoke with Erik Molvar.	Oct. 6, 2011—Phone call to Kate Winthrop, from Erik Molvar. Erik stated that the Biodiversity Conservation Alliance would be interested in consultation.  Feb. 29, 2012—The receptionist stated that they received the Draft PEIS package. Erik was not in the office and he gave Sherri Erik's cell phone number.  March 5, 2012—Erik Molvar received the Draft PEIS but did not recall getting a letter. Erik had not reviewed the document and would call if he had any questions or comments.
Center for Biological Diversity	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Colorado Environmental Coalition	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	

TABLE L-8 (Cont.)

Organization	BLM Contact	Organization Response
Colorado Plateau Archaeological Alliance	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.  Jan. 25, 2012—Packet from the BLM containing notification letter and Draft PEIS.  Feb. 29, 2012 —Sherri Thompson left voicemail for Jerry Spangler.  March 5, 2012—Sherri Thompson called Jerry Spangler to follow up on the Draft PEIS.  Sherri sent public meeting information via e-mail.	Nov. 3, 2011—E-mail to Sherri Thompson from John Spangler accepting the invitation to be a consulting party.  March 5, 2012—Jerry received the letter and the Draft PEIS. He looked at it briefly and thought it looked good, but wanted to review the cultural section in detail. Jerry asked for information on public meeting dates.
Defenders of Wildlife-National Headquarters	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.  Feb. 02, 2012—Packet from the BLM containing notification letter and the Draft PEIS.  Feb. 29, 2011—Sherri Thompson called Carl Conner to follow-up on the Draft PEIS.	Feb. 29, 2011—Carl Conner received the Draft PEIS. He did not have any questions or concerns at the time. He complimented the way the document was put together and appreciated the use of the most recent information.
Dominguez Archaeological Research Group Inc.		
National Trust for Historic Preservation	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
National Trust for Historic Preservation-Mountains/Plains Office	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	



TABLE L-8 (Cont.)

Organization	BLM Contact	Organization Response
National Wildlife Federation-Rocky Mountain Natural Resource Center	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Natural Resources Defense Council-Headquarters	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Nine Mile Canyon Coalition	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
NPS - National Historic Trails - Intermountain Region, Santé Fe Field Office	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
NPS -National Historic Trails - Intermountain Region, Salt Lake City Field Office	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.  Jan. 20, 2012—Packet from the BLM containing notification letter and Draft PEIS.  Feb. 29, 2012—Sherri Thompson left a voicemail for Lee Kreutzer.	Nov. 2, 2011—Phone call from Lee Kreutzer to Sherri Thompson. Lee indicated they are interested in consultation.  March 2, 2012—Lee Kreutzer returned Sherri Thompson's phone call. She received the letter and Draft PEIS but did not have a chance to review it. She planned on attending a public meeting in Salt Lake City.
Old Spanish Trail Association	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Old Spanish Trail Association, Grand Junction Local Chapter	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	Oct. 11, 2011—Phone call from Vicki Felmile to Sherri Thompson. Vicki would like to accept the invitation to consult.

TABLE L-8 (Cont.)

Organization	BLM Contact	Organization Response
Old Spanish Trail Association, Grand Junction Local Chapter ( <i>Cont.</i> )	Feb. 29, 2012—Sherri Thompson called Vicki Felmile in regard to Draft PEIS.	Feb. 29, 2012—Vicki Felmile indicated that there were no concerns at this time.
Oregon-California Trails Association, Missouri Chapter	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Oregon-California Trails Association, Wyoming Chapter	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Red Rock Forests	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues..	
Sierra Club- Rocky Mountain Natural Resource Center	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Southern Utah Wilderness Alliance	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
The Nature Conservancy, Worldwide Office	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
The Nature Conservancy, Moab Project Office	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	



TABLE L-8 (Cont.)

Organization	BLM Contact	Organization Response
The Wilderness Society	Oct. 2011—Letter from office BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Utah Professional Archaeological Council	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Utah Rock Art Research Association	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Western Colorado Congress	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Western Resource Advocates	Oct. 2011—Letter from BLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	
Wilderness Workshop	Oct. 2011—Letter from BLM state officeBLM State Office giving notice of the PEIS and inviting to consult on Section 106-related issues.	

#### L.4 REFERENCES

BLM (Bureau of Land Management), 2004a, *Manual 8120, Tribal Consultation under Cultural Resources*, Release 8-74, 45, U.S. Department of the Interior.

BLM, 2004b, *Handbook H-8120-1, General Procedural Guidance for Native American Consultation*, Release 8-75, U.S. Department of the Interior.

BLM 2012, *Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*, Vols. 1–4, DES 12-01, Jan.



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**ATTACHMENT 1:**  
**TRIBAL CORRESPONDENCE**



## (a) All Tribes



## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov/ut/ist/en.html>IN REPLY REFER TO:  
8100 / (UT-934)

July 20, 2011

Maxine Natchees, Chairwoman  
Ute Indian Tribe  
P.O. Box 190  
Fort Duchesne, UT 84026

Dear Ms. Natchees:

The Bureau of Land Management (BLM) is initiating a Programmatic Environmental Impact Statement (PEIS) to take a fresh look at land use allocation decisions made in 2008 regarding the management of oil shale and tar sands resources on Federal lands in Utah, Colorado, and Wyoming, in order to consider which lands should be open to future leasing of oil shale and tar sands resources. The PEIS will evaluate the magnitude of potential leasing activities and assess the associated environmental, cultural, and socio-economic issues. On the basis of the analysis in the PEIS, the BLM may amend relevant Resource Management Plans in these states. Preparation of the PEIS is a multi-step process that will include publication of the Draft PEIS and proposed plan amendment, the Final PEIS and plan amendment, as well as a Record of Decision.

Through our government-to-government consultation procedures, we would like to invite you to become involved in the development of the PEIS and the land use planning process. Gaining your specific knowledge and perspective is critical and valuable to the overall success of BLM's management of oil shale and tar sands resources—both at this land use planning stage and in the event that BLM processes any future leasing and development plans. Enclosed are the maps of the study area for the development of the PEIS. As such, we would like to facilitate discussion and the sharing of information that would be most useful to you and your Tribe. Argonne National Laboratory has been contracted to assist us with consultation logistics and information gathering. They will help with future contacts with tribal representatives and with coordinating meetings, and assist the BLM with updating the ethnohistoric overview completed for the 2008 PEIS. The overview is a compilation of information from existing, written sources. No information will be released that is considered culturally sensitive by interested tribes. The BLM, of course, is responsible for government-to-government interactions.

We would also like to invite you to participate in development of the PEIS and potential plan amendments as a cooperating agency. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) 40 C.F.R. 1500-1508 emphasizes the use of cooperating agency relationships as a means of ensuring timely coordination with Tribal, State, Federal, and local agencies in preparation of NEPA analyses and documentation. The BLM places great importance on working effectively with its governmental partners through the cooperating agency relationship. For further information, please see our cooperating agency web site: <http://www.blm.gov/planning/cadg/>

Cooperating agency status is available to government entities with jurisdiction by law or special expertise. The cooperating agency must sign a Memorandum of Understanding with the Federal agency and must fund its own participation. Other governmental entities who may be invited to be cooperating agencies on this PEIS include the States of Colorado, Utah and Wyoming; county governments; and several local town and city governments.

Preparation of the PEIS is a multi-step process that will be completed in approximately 20 months. We anticipate a very short concurrent review timeframes for BLM and our cooperating agencies. Cooperating agencies may negotiate the level of their involvement consistent with their available staffing and resources.

Gaining your Tribe's expertise and perspective is important to the success of the PEIS and subsequent management strategies. We value your knowledge, concerns and perspectives relating to the planning area. Please note that the Tribe's participation as a cooperating agency does not replace the BLM's obligation to consult on a government-to-government basis. Therefore, regardless of your Tribe's decision to participate or not as a cooperating agency, our government-to-government consultation will continue.

If you would like to participate as a cooperating agency, please contact Sherri Thompson, BLM Project Manager at (303) 239-3758. Also, please allow me to direct you to our project website where you can gain further information and sign up for web news and updates. The website address is: [http://www.blm.gov/wo/st/en/prog/energy/oilshale\\_2.html](http://www.blm.gov/wo/st/en/prog/energy/oilshale_2.html).

Thank you for your consideration. We look forward to our interaction and discussions. For your convenience, we have included a response form and return envelope with this letter. We would also welcome your response by phone, fax, email, or letter. Your responses may be sent to Byron Loosle, who is my designated representative for this project. Byron Loosle may be contacted at the address above, by phone at (801) 539-4276, by fax at (801) 539-4074, or by email at [bloosle@blm.gov](mailto:bloosle@blm.gov).

Sincerely,



Juan Palma  
State Director

Enclosures (3):

- Map of Development Area (2 pp)
- Tribal Response Form (1 p)
- Stamped Addressed Return Envelope (1 p)

cc: Betsy Chapoose, Director, Cultural Rights and Protection



Organization	First	Last	Title	Address	City	ST	Zip	FedEx Address
Hopi Tribal Council	LeRoy N.	Shingoitewa	Chairman	P.O. Box 123	Kykotsmovi	AZ	86039	One Main Street, Kykotsmovi, AZ 86039
Kaibab Paiute Tribal Council	Manuel	Savala	Chairperson	HC 65, Box 2	Fredonia	AZ	86022	250 N Pipe Springs, Fredonia, AZ 86022
Navajo Nation	Ben	Shelly	President	P.O. Box 7440	Window Rock	AZ	86515	Office of the President, Navajo Tribal Hill Drive, Window Rock, AZ 86515
Navajo Nation, Dennehotso Chapter	Chester	Begay	President	P.O. Box 301	Dennehotso	AZ	86535	
Navajo Nation, Mexican Water Chapter	Jerry	Tsosie	President	HC 61 Box 38	Tecnospos	AZ	86514	
Navajo Nation, Navajo Mountain Chapter	Alex	Bitsinnie	President	P.O. Box 10264	Tonalea	AZ	86044	
Navajo Nation, Teec Nos Pos Chapter	Roy	Kady	President	P.O. Box 209	Teec Nos Pos	AZ	86514	
Navajo Nation, Historic Preservation Dept.				P.O. Box 570	Window Rock	AZ	86515	
Southern Ute Tribe	Jimmy R.	Newton, Jr.	Chairman	P.O. Box 737	Ignacio	CO	81137	356 Ouray Drive, Ignacio, CO 81137
Ute Mountain Ute Tribe	Gary	Hayse	Chairman	P.O. Box 248	Towaoc	CO	81334-0248	125 Mike Wash Road-Tribal Complex, Towaoc, CO 87334
Shoshone-Bannock Tribes	Alonzo A.	Coby	Chairman	P.O. Box 306	Fort Hall	ID	83203-0306	1 Pima Drive, Fort Hall, ID 83203
Pueblo of Laguna	John E.	Antonio, Sr.	Governor	P.O. Box 194	Laguna	NM	87026	101 Capitol Drive, Laguna, NM 87026
Pueblo of Nambé	Ernest	Mirabal	Governor	Route 1, Box 117-BB	Santa Fe	NM	87501	15-A NP 102 West, Santa Fe, NM 75406
Pueblo of Santa Clara	Walter	Dasheno	Governor	P.O. Box 580	Espanola	NM	87532	1 Tea Street, Espanola, NM 87532
Pueblo of Zia	Marcellus	Medina	Governor	135 Capitol Square Drive	Zia Pueblo	NM	87053-6013	135 Capitol Square Drive, Zia Pueblo, NM 87053-6013
Navajo Nation, Aneth Chapter	John	Billie	President	P.O. Box 430	Montezuma Creek	UT	84534	
Navajo Nation, Oljato Chapter	James	Black	President	P.O. Box 360455	Monument Valley	UT	84531	
Navajo Nation, Red Mesa Chapter	Herman	Farley	President	P.O. Box 422	Montezuma Creek	UT	84534	
Navajo Utah Commission	Clarence	Rockwell	Executive Director	P.O. Box 570	Montezuma Creek	UT	84534	ANETH ADM BLDG HWY 262 Aneth, Utah 84510 USA
Northwestern Band of Shoshone Nation	Gwen	Davis	Chairman	707 N. Main St	Brigham City	UT	84302	
Paiute Indian Tribe of Utah Tribal Council	Jeanine	Borchardt	Chairperson	440 N. Paiute Drive	Cedar City	UT	84720-2613	
Ute Indian Tribe	Richard	Jenks	Chairperson	P.O. Box 190	Ft. Duchesne	UT	84026	899 South 7500 East, Ft. Duchesne, UT 84026
Northern Arapaho Business Council	Jim	Shakespeare	Chairman	P.O. Box 396	Fort Washakie	WY	82514	533 Ethete Road, Ethete, WY 82520
Eastern Shoshone Business Council	Mike	Lajeunesse	Chairman	P.O. Box 217	Fort Washakie	WY	82514	14 Norfork Road, Fort Washakie, WY 82514
White Mesa Ute Band	Leona	Eyetoo	Council-woman	P.O. Box 7096	White Mesa	UT	84511	14 Willow St, White Mesa, UT 84511



**United States Department of the Interior****BUREAU OF LAND MANAGEMENT**

Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155  
<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:  
8100 / (UT-934)

**JAN 25 2012**

Elayne Atcitty, Councilwoman  
White Mesa Band of the Ute Mountain Ute Tribe  
P. O. Box 7096  
Blanding, UT 84511

Dear Ms. Atcitty:

Enclosed please find the *Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. The Bureau of Land Management (BLM) has prepared this Draft PEIS in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA). As a follow-up to our initial letter on July 19, 2011, inviting you to engage in Government-to-Government consultation on this planning initiative, the BLM invites you to review the Draft PEIS and provide any additional information or comments relating to historic and cultural resources. The BLM also invites you to continue participating in the planning and NEPA process, and welcomes your input as BLM fulfills its obligations under Section 106 of the National Historic Preservation Act (NHPA) regarding the proposed undertaking, i.e., the potential amendment of ten BLM Resource Management Plans (RMPs) in Colorado, Utah, and Wyoming to allocate lands as "open" or "closed" to potential leasing for oil shale and tar sands development.

As described in the Draft PEIS, the BLM is examining proposed land use allocation decisions for potential availability of oil shale and tar sands leasing that will provide future management direction as part of the RMP, but will not authorize any on the ground activities. See Draft PEIS, Chapter 1, Section 1.1, Text box. The BLM recognizes that decision-making regarding the potential leasing and development of oil shale and tar sands resources would occur in three stages. The first stage would be accomplished through the development of the current PEIS process, which could lead to a Record of Decision (ROD) regarding amendments to land use allocations to open or close areas as available for potential leasing. The second stage would be the BLM's consideration of lease applications submitted by interested parties, and the third stage would be the BLM's consideration of site-specific plans of development for leased areas. See Draft PEIS, Chapter 1, Section 1.1, Text box. The second and third stages would require compliance with both NEPA, Section 106 of the NHPA, as well as other pertinent laws, regulations, and policies. See Draft PEIS, Chapter 3, Section 3.9.1.

A BLM representative will contact you to ensure that you have received this letter and the enclosed Draft PEIS, and to answer any questions you may have regarding historic properties and the potential effects the proposed land use plan amendments may have on such properties. We will also ask if you would like to meet to discuss these or other concerns with our project manager, cultural resources program representative, or other appropriate BLM staff or managers. You may also submit comments regarding historic properties individually to the BLM contact listing below, or as part of the NEPA comment process.



The BLM is accepting comments on Draft PEIS through the NEPA process for ninety (90) calendar days following the U.S. Environmental Protection Agency's publication of its *Notice of Availability* in the *Federal Register*.

The BLM will hold public open house meetings for the purposes of providing the public an overview of the document and responding to questions about the Draft PEIS. These public meetings will be scheduled throughout the area covered by the PEIS and will be announced through the public media in the near future and on the BLM website at <http://osts.eis.anl.gov>.

Your review and comments on the Draft PEIS are critical to the success of this planning effort. If you wish to submit comments on the Draft PEIS, we suggest that you make them as specific as possible. Comments will be more helpful if they include suggested changes, sources, or methodologies, and reference to a section or page number. Comments containing only opinions or preferences will be considered and included as part of the decision-making process, although they will not receive a formal response from the BLM.

Comments may be submitted electronically at <http://ostseis.anl.gov/involve/comments/index.cfm>. A comment form can be found on-line at this site. Comments may also be submitted by mail to BLM Oil Shale and Tar Sands PEIS, Argonne National Laboratory, EVS Division, Building 240, 9700 South Cass Avenue, Argonne, Illinois 60439. To facilitate analysis of comments and information submitted, we strongly encourage you to submit comments in electronic format.

Before including your address, phone number, e-mail address or other personal identifying information, you should be aware your entire comment, including your personal identifying information, may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Thank you for your interest in the *Draft PEIS and Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. We appreciate the information and suggestions you contribute to the planning process. For additional information or clarification regarding this document, the planning process, or questions related to Section 106 of the NHPA, please contact Byron Loosle, State Archaeologist, Bureau of Land Management, Utah State Office, PO Box 45155, Salt Lake City, Utah, 84145-0155, (801) 539-4276, [bloosle@blm.gov](mailto:bloosle@blm.gov), or visit the Web site at <http://osts.eis.anl.gov>.

Sincerely,

/s/ Juan Palma

Juan Palma  
State Director

Enclosure:  
PEIS

Elayne Atcitty, Councilwoman  
White Mesa Band of the Ute Mountain Ute Tribe  
P. O. Box 7096  
Blanding, Utah 84511

Richard Jenks, Jr. Chairman  
Ute Indian Tribe  
P.O. Box 190  
Fort Duchesne, Utah 84026

cc: Betsy Chapoose, Director, Cultural Rights and Protection

Ms. Jeanine Borchardt, Chair  
Paiute Tribe of Utah  
440 North Paiute Drive  
Cedar City, Utah 84720

cc: Dorena Martineau

Manuel M. Savala, Chair  
Kaibab Band of Paiute Indians  
HC 65 Box 2  
Pipe Spring, AZ 86022

cc: Mr. Charley Bulletts, Cultural Resource Director

Leroy Ned Shingoitewa, Chairman  
Hopi Tribal Council  
P.O. Box 123  
Kykotsmovi, AZ 86039

cc: Leigh Kuwanwisiwma, Director, Hopi Cultural Preservation Office

Mr. Joe Shirley, President  
Navajo Nation  
P.O. Box 9000  
Highway 264, Tribal Hills Drive  
Window Rock, AZ 86515

cc: Aneth Chapter  
P.O. Box 430  
Montezuma Creek, UT 84534

Dennehotso Chapter  
P.O. Box 301  
Dennehotso, AZ 86535

Mexican Water Chapter  
HC-61, Box 38  
Teechnospos, AZ 86514



Navajo Mountain Chapter  
Navajo Mountain Trading Post  
P.O. Box 10070  
Tonalea, AZ 86044

Oljato Chapter  
P.O. Box 360455  
Monument Valley, UT 84531

Red Mesa Chapter  
P.O. Box 422  
Montezuma Creek, UT 84534

Tecnospos Chapter  
P.O. Box 106  
Tecnospo, AZ 86514

Clarence Rockwell, Director  
Navajo Utah Commission  
P.O. Box 570  
Montezuma Creek, UT 84534

Timothy Begay  
Navajo Nation  
Cultural Specialist  
Historic Preservation Department  
P.O. Box 4950  
Window Rock, AZ 86515

John Antonio Sr., Governor  
Laguna Pueblo  
P.O. Box 194  
Laguna, NM 87026

Ernest Mirabel, Governor  
Pueblo of Nambe  
Route 1, Box 117-BB  
Santa Fe, NM 87501

Walter Dasheno, Governor  
Pueblo of Santa Clara  
P.O. Box 580  
Española, NM 87532

Ivan Pino, Governor  
Pueblo of Zia  
135 Capitol Square Drive  
Zia Pueblo, NM 87503

**Gwen Davis, Chair  
Northwestern Band of Shoshone Nation  
707 North Main  
Brigham City, UT 84302**

**cc: Patty Madsen  
Northwestern Band of Shoshone Nation  
862 South Main Street Ste 6  
Brigham City, UT 84302**





## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, Wyoming 82003-1828

In Reply Refer To:  
3900 (930)  
8100

JAN 20 2012

Mr. Mike Lajeunesse, Chairman  
Eastern Shoshone Tribe of the Wind River Reservation  
P.O. Box 538  
Fort Washakie, WY 82514

Dear Chairman Lajeunesse:

Attached please find the *Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. The Bureau of Land Management (BLM) has prepared this Draft PEIS in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA). As a follow-up to our initial letter July 21, 2011, inviting the Eastern Shoshone Tribe to engage in Government-to-Government consultation on this planning initiative, the BLM invites you to review the Draft PEIS and provide any additional information or comments relating to historic and cultural resources. The BLM also invites you to continue participating in the planning and NEPA process, and welcomes your input as BLM fulfills its obligations under Section 106 of the National Historic Preservation Act (NHPA) regarding the proposed undertaking, i.e., the potential amendment of ten BLM Resource Management Plans (RMPs) in Colorado, Utah, and Wyoming to allocate lands as "open" or "closed" to potential leasing for oil shale and tar sands development.

As described in the Draft PEIS, the BLM is examining proposed land use allocation decisions for potential availability of oil shale and tar sands leasing that will provide future management direction as part of the RMP, but will not authorize any on the ground activities. See Draft PEIS, Chapter 1, Section 1.1, Text box. The BLM recognizes that decisionmaking regarding the potential leasing and development of oil shale and tar sands resources would occur in three stages. The first stage would be accomplished through the development of the current PEIS process, which could lead to a Record of Decision (ROD) regarding amendments to land use allocations to open or close areas as available for potential leasing. The second stage would be the BLM's consideration of lease applications submitted by interested parties, and the third stage would be the BLM's consideration of site-specific plans of development for leased areas. See Draft PEIS, Chapter 1, Section 1.1, Text box. The second and third stages would require compliance with both NEPA, Section 106 of the NHPA, as well as other pertinent laws, regulations, and policies. See Draft PEIS, Chapter 3, Section 3.9.1.

A BLM representative will contact you to ensure that you have received this letter and the attached Draft PEIS, and to answer any questions you may have regarding historic properties and the potential effects the proposed land use plan amendments may have on such properties. We will also ask if you would like to meet to discuss these or other concerns with our project manager, cultural resources program representative, or other appropriate BLM staff or managers. You may also submit comments regarding historic properties individually to the BLM contact listing below, or as part of the NEPA comment process.



The BLM is accepting comments on Draft PEIS through the NEPA process for ninety (90) calendar days following the U.S. Environmental Protection Agency's publication of its *Notice of Availability* in the *Federal Register*.

The BLM will hold public open house meetings for the purposes of providing the public an overview of the document and responding to questions about the Draft PEIS. These public meetings will be scheduled throughout the area covered by the PEIS and will be announced through the public media in the near future and on the BLM website at <http://osts.eis.anl.gov>.

Your review and comments on the Draft PEIS are critical to the success of this planning effort. If you wish to submit comments on the Draft PEIS, we suggest that you make them as specific as possible. Comments will be more helpful if they include suggested changes, sources, or methodologies, and reference to a section or page number. Comments containing only opinions or preferences will be considered and included as part of the decisionmaking process, although they will not receive a formal response from the BLM.

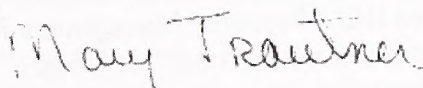
Comments may be submitted electronically at <http://ostseis.anl.gov/involve/comments/index.cfm>. A comment form can be found on-line at this site. Comments may also be submitted by mail to BLM Oil Shale and Tar Sands PEIS, Argonne National Laboratory, EVS Division, Building 240, 9700 South Cass Avenue, Argonne, Illinois 60439. To facilitate analysis of comments and information submitted, we strongly encourage you to submit comments in electronic format.

Before including your address, phone number, e-mail address or other personal identifying information, you should be aware your entire comment, including your personal identifying information, may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Thank you for your interest in the *Draft PEIS and Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. We appreciate the information and suggestions you contribute to the planning process.

For additional information or clarification regarding this document or the planning process, please contact Sherri Thompson, Project Manager, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7093, (303) 239-3758, [sthompso@blm.gov](mailto:sthompso@blm.gov), or visit the Web site at <http://osts.eis.anl.gov>. For questions regarding Section 106 of the NHPA, please contact Ranel Stephenson Capron, Deputy Preservation Officer, 5353 Yellowstone Road, Cheyenne, WY 82009, (307) 775-6108, [rcapron@blm.gov](mailto:rcapron@blm.gov).

Sincerely,



Donald A. Simpson  
State Director

Enclosure

**Also sent to:**

Mr. Jim Shakespeare, Chairman  
Northern Arapaho Tribe of the Wind River Reservation  
P.O. Box 396  
Fort Washakie, WY 82514





## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093  
[www.blm.gov/co](http://www.blm.gov/co)



In Reply Refer To:  
3900 (CO-922)

FEB 02 2012

Chairman Jimmy R. Newton, Jr.  
Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, Colorado 81137-0737

Dear Mr. Newton:

Enclosed please find the *Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. The Bureau of Land Management (BLM) has prepared this Draft PEIS in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA). As a follow-up to our initial letter on June 14, 2011, inviting you to engage in Government-to-Government consultation on this planning initiative, the BLM invites you to review the Draft PEIS and provide any additional information or comments relating to historic and cultural resources. The BLM also invites you to continue participating in the planning and NEPA process, and welcomes your input as BLM fulfills its obligations under Section 106 of the National Historic Preservation Act (NHPA) regarding the proposed undertaking, i.e., the potential amendment of ten BLM Resource Management Plans (RMPs) in Colorado, Utah, and Wyoming to allocate lands as "open" or "closed" to potential leasing for oil shale and tar sands development.

As described in the Draft PEIS, the BLM is examining proposed land use allocation decisions for potential availability of oil shale and tar sands leasing that will provide future management direction as part of the RMP, but will not authorize any on the ground activities. See Draft PEIS, Chapter 1, Section 1.1, Text box. The BLM recognizes that decision-making regarding the potential leasing and development of oil shale and tar sands resources would occur in three stages. The first stage would be accomplished through the development of the current Draft PEIS process, which could lead to a Record of Decision (ROD) regarding amendments to land use allocations to open or close areas as available for potential leasing. The second stage would be the BLM's consideration of lease applications submitted by interested parties, and the third stage would be the BLM's consideration of site-specific plans of development for leased areas. See Draft PEIS, Chapter 1, Section 1.1, Text box. The second and third stages would require compliance with both NEPA, Section 106 of the NHPA, as well as other pertinent laws, regulations, and policies. See Draft PEIS, Chapter 3, Section 3.9.1.



A BLM representative will contact you to ensure that you have received this letter and the enclosed Draft PEIS, and to answer any questions you may have regarding historic properties and the potential effects the proposed land use plan amendments may have on such properties. We will also ask if you would like to meet to discuss these or other concerns with our project manager, cultural resources program representative, or other appropriate BLM staff or managers. You may also submit comments regarding historic properties individually to the BLM contact listing below, or as part of the NEPA comment process.

The BLM is accepting comments on the Draft PEIS through the NEPA process for ninety (90) calendar days following the U.S. Environmental Protection Agency's publication of its *Notice of Availability* in the *Federal Register*.

The BLM will hold public open house meetings for the purposes of providing the public an overview of the document and responding to questions about the Draft PEIS. These public meetings will be scheduled throughout the area covered by the Draft PEIS and will be announced through the public media in the near future and on the BLM website at: <http://osts.eis.anl.gov>.

Your review and comments on the Draft PEIS are critical to the success of this planning effort. If you wish to submit comments on the Draft PEIS, we suggest that you make them as specific as possible. Comments will be more helpful if they include suggested changes, sources, or methodologies, and reference to a section or page number. Comments containing only opinions or preferences will be considered and included as part of the decision-making process, although they will not receive a formal response from the BLM.

Comments may be submitted electronically at:

<http://ostseis.anl.gov/involve/comments/index.cfm>. A comment form can be found on-line at this site. Comments may also be submitted by mail to BLM Oil Shale and Tar Sands PEIS, Argonne National Laboratory, EVS Division, Building 240, 9700 South Cass Avenue, Argonne, Illinois 60439. To facilitate analysis of comments and information submitted, we strongly encourage you to submit comments in electronic format.

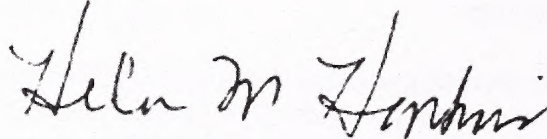
Before including your address, phone number, e-mail address or other personal identifying information, you should be aware your entire comment, including your personal identifying information, may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Thank you for your interest in the *Draft PEIS and Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. We appreciate the information and suggestions you contribute to the planning process. For additional information or clarification regarding



this document, the planning process, or questions related to Section 106 of the NHPA, please contact Daniel Haas, State Deputy Preservation Officer, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215-7093, (303) 239-3647, [dhaas@blm.gov](mailto:dhaas@blm.gov), or visit the website at: <http://osts.eis.anl.gov>.

Sincerely,



Helen M. Hankins  
State Director

Enclosure

cc: Steve Whiteman, Natural Resources Division, Wildlife Resource Management  
Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, Colorado 81137-0737

Also sent to:

Chairman Gary Hayes  
Ute Mountain Ute Indian Tribe  
P.O. Box 468  
Towaoc, Colorado 81334-0468

Terry Knight, Tribal Historic Preservation Officer  
Ute Mountain Ute Indian Tribe  
P.O. Box 248  
Towaoc, Colorado 81334

**(b) Eastern Shoshone Tribe of the Wind River Reservation****United States Department of the Interior****BUREAU OF LAND MANAGEMENT**

Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093  
[www.blm.gov/co](http://www.blm.gov/co)



In Reply Refer To:  
3900 (WO-320)

**APR 11 2012**

Mr. Wilfred Ferris  
Eastern Shoshone Tribe  
P.O. Box 538  
Fort Washakie, Wyoming 82514

Dear Mr. Ferris:

During a recent meeting between the Ute Mountain Ute Tribe and the Colorado Bureau of Land Management (BLM), the tribal representatives asked the BLM to hold a meeting with the cultural representatives of the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Ute Indian Tribe of the Uintah & Ouray Reservation, and the Eastern Shoshone Tribe regarding the protection of wickiup sites in the Oil Shale and Tar Sands project area. They had expressed specific concerns with protecting the wickiup sites located in the Yellow Creek area of Rio Blanco County, Colorado.

The Colorado BLM is inviting you and the cultural representatives of the Ute Indian Tribe, the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe to a consultation meeting and field tour of the Yellow Creek area on May 2, 2012. We intend to look at a few representative sites and the overall area, and would appreciate your help to discuss appropriate means of protection for these sites and to identify a protection boundary around them.

Wednesday, May 2, 2012, will be a full day beginning at 8:00 a.m. We will meet at the BLM White River Field Office, located at 220 East Market Street, Meeker, Colorado, for a brief overview of the project and to answer any questions you may have and then will leave for the field to look at these sites later that morning. A sack lunch and water will be provided. We anticipate getting back to the office late afternoon leaving an hour or so for discussion.

The BLM will provide \$200/day each for up to two tribal representatives for their subject matter expertise, lodging and other travel expenses unless the individual is a salaried tribal staff member. Tribes are welcome to bring additional representatives at their own expense. Reimbursements will be paid by check after the meeting.

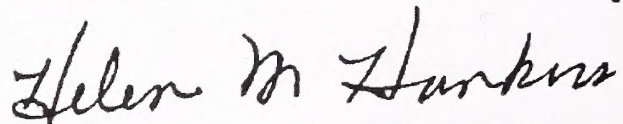
A block of rooms at the government rate has been set aside at the Blue Spruce Hotel in Meeker (970) 878- 0777. Participants are asked to call the hotel directly and provide



their own credit card for their rooms by referencing the "BLM" room block. Hotel reservations must be made by April 25, 2012, as all unreserved rooms will be released after that date. Reservations may be made after that date if rooms are still available.

Please call Sherri Thompson at (303) 239-3758 to confirm your attendance at this consultation meeting or if you need further information. Thank you for your interest in this project. We look forward to working with the tribes so we can assure that our land management activities consider and protect places of importance.

Sincerely,

A handwritten signature in black ink that reads "Helen M. Hankins". The signature is written in a cursive style with a large, stylized 'H' and 'M'.

Helen M. Hankins,  
State Director

## (c) Hopi

TRIBAL RESPONSE FORM  
OIL SHALE/TAR SANDS PEIS

2011 JUL 29 AM 9:04

Dear Tribal Official:

Hopi Tribe Leroy N. Shingaitewa Chairman

This form is provided for your convenience to assist BLM in ensuring that your tribe has received our correspondence, and that we can continue to communicate with you in the most effective way possible. If you are not the appropriate individual to receive and respond to this form, please see that the enclosed correspondence are given to the appropriate person.

Please fill out this form and return it in the supplied return envelope. Be assured that we will follow up with you and/or your other tribal representatives in accordance with your responses.



Our tribe has information or concerns that we would like to discuss with the BLM about this project. Therefore, we would like you to contact us to set up a meeting where we can consult on the issues. Please identify an acceptable date and time for such a meeting.



The information that you have provided in your correspondence is sufficient and we do not require consultation with you at this time. We also understand that we may request other opportunities to consult with you in the future.



Thank you for your correspondence. Our tribe has no comment and no further interest in BLM's proposed oil shale/tar sands PEIS at this time. We understand, however, that we may contact you at any time in the future to discuss issues or to request formal consultation.

Name of individual responding to this form (please print):

Name: John T. Mergaot Title: Legal ResearcherAddress: PO Box 123 Kykotsmav AZ 86039Telephone No. 928 734 3619 Email: tmergaot@hopi.nsn.us

If there is some else we should contact regarding this correspondence, please indicate their name, title, address, and telephone number below:

Name: Leroy N. Shingaitewa Title: Director Hopi Cultural Preservation OfficeAddress: PO Box 123 Kykotsmav AZ 86039Telephone No. 928 734 3611 Email: lshingaitewa@hopi.nsn.us

Please return this form by (August 21, 2011).



## (d) Navajo Nation—Navajo Mountain Chapter

TRIBAL RESPONSE FORM  
OIL SHALE/TAR SANDS PEIS

2011 JUL 29 AM 9:00

Dear Tribal Official:

This form is provided for your convenience to assist BLM in ensuring that your tribe has received our correspondence, and that we can continue to communicate with you in the most effective way possible. If you are not the appropriate individual to receive and respond to this form, please see that the enclosed correspondence are given to the appropriate person.

Please fill out this form and return it in the supplied return envelope. Be assured that we will follow up with you and/or your other tribal representatives in accordance with your responses.



Our tribe has information or concerns that we would like to discuss with the BLM about this project. Therefore, we would like you to contact us to set up a meeting where we can consult on the issues. Please identify an acceptable date and time for such a meeting.



The information that you have provided in your correspondence is sufficient and we do not require consultation with you at this time. We also understand that we may request other opportunities to consult with you in the future.



Thank you for your correspondence. Our tribe has no comment and no further interest in BLM's proposed oil shale/tar sands PEIS at this time. We understand, however, that we may contact you at any time in the future to discuss issues or to request formal consultation.

Name of individual responding to this form (please print):

Name:

Alex Bitinnic

Title:

Navajo Mountain Chapter Pres

Address:

PO Box 10264

Tonalear, AZ 86044

Telephone No.

928.575.5922

Email:

albitinnic@navajo.com

If there is some else we should contact regarding this correspondence, please indicate their name, title, address, and telephone number below:

Name:

Title:

Address:

Telephone No.

Email:

Please return this form by (August 21, 2011).

## (e) Paiute Indian Tribe of Utah (PITU)

TRIBAL RESPONSE FORM  
OIL SHALE/TAR SANDS PEIS

2011 AUG -5 AM 10:15

Dear Tribal Official:

This form is provided for your convenience to assist BLM in ensuring that your tribe has received our correspondence, and that we can continue to communicate with you in the most effective way possible. If you are not the appropriate individual to receive and respond to this form, please see that the enclosed correspondence are given to the appropriate person.

Please fill out this form and return it in the supplied return envelope. Be assured that we will follow up with you and/or your other tribal representatives in accordance with your responses.

☐

Our tribe has information or concerns that we would like to discuss with the BLM about this project. Therefore, we would like you to contact us to set up a meeting where we can consult on the issues. Please identify an acceptable date and time for such a meeting.

☒

The information that you have provided in your correspondence is sufficient and we do not require consultation with you at this time. We also understand that we may request other opportunities to consult with you in the future.

☐

Thank you for your correspondence. Our tribe has no comment and no further interest in BLM's proposed oil shale/tar sands PEIS at this time. We understand, however, that we may contact you at any time in the future to discuss issues or to request formal consultation.

Name of individual responding to this form (please print):

Name: Dorena Martineau Title: PITU Cultural ResourcesAddress: Paiute Indian Tribe of Utah  
440 N. Paiute Drive, Cedar City, Utah 84721Telephone No. 435-586-1112 Email: dorena.martineau@ihs.gov

If there is some else we should contact regarding this correspondence, please indicate their name, title, address, and telephone number below:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Email: \_\_\_\_\_

Please return this form by (August 21, 2011).



## (f) Pueblo of Santa Clara

TRIBAL RESPONSE FORM  
OIL SHALE/TAR SANDS PEIS

Dear Tribal Official:

This form is provided for your convenience to assist BLM in ensuring that your tribe has received our correspondence, and that we can continue to communicate with you in the most effective way possible. If you are not the appropriate individual to receive and respond to this form, please see that the enclosed correspondence are given to the appropriate person.

Please fill out this form and return it in the supplied return envelope. Be assured that we will follow up with you and/or your other tribal representatives in accordance with your responses.

☐

Our tribe has information or concerns that we would like to discuss with the BLM about this project. Therefore, we would like you to contact us to set up a meeting where we can consult on the issues. Please identify an acceptable date and time for such a meeting.

☒

The information that you have provided in your correspondence is sufficient and we do not require consultation with you at this time. We also understand that we may request other opportunities to consult with you in the future.

☐

Thank you for your correspondence. Our tribe has no comment and no further interest in BLM's proposed oil shale/tar sands PEIS at this time. We understand, however, that we may contact you at any time in the future to discuss issues or to request formal consultation.

Name of individual responding to this form (please print):

Name: Ben Chavarria Title: Land & Cultural ResourcesAddress: P.O. Box 580  
Espanola NM 87532Telephone No. (505) 699 7948 Email: bchavarria@santaclara.pueblo.org

If there is some else we should contact regarding this correspondence, please indicate their name, title, address, and telephone number below:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Email: \_\_\_\_\_

Please return this form by (August 21, 2011).



## (g) Ute Indian Tribe of the Uintah and Ouray Reservation



## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093  
[www.blm.gov/co](http://www.blm.gov/co)



In Reply Refer To:  
3900 (WO-320)

**APR 11 2012**

Ms. Irene Cuch  
Tribal Chairwoman  
Ute Indian Tribe of the Uintah and Ouray Reservation  
P.O. Box 190  
Ft. Duchesne, Utah 84026

Dear Ms. Cuch:

During a recent meeting between the Ute Mountain Ute Tribe and the Colorado Bureau of Land Management (BLM), the tribal representatives had asked the BLM to hold a meeting with the cultural representatives of the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Ute Indian Tribe of the Uintah & Ouray Reservation, and the Eastern Shoshone Tribe regarding the protection of wickiup sites in the Oil Shale and Tar Sands project area. They had expressed specific concerns with protecting the wickiup sites located in the Yellow Creek area of Rio Blanco County, Colorado.

The Colorado BLM is inviting you and the cultural representatives of the Southern Ute, the Eastern Shoshone, and the Ute Mountain Ute Tribe to a consultation meeting and field tour of the Yellow Creek area on May 2, 2012. We intend to look at a few representative sites and the overall area, and would appreciate your help to discuss appropriate means of protection for these sites and to identify a protection boundary around them.

Wednesday, May 2, 2012, will be a full day beginning at 8:00 a.m. We will meet at the BLM White River Field Office, located at 220 East Market Street, Meeker, Colorado, for a brief overview of the project and to answer any questions you may have and then will leave for the field to look at these sites later that morning. A sack lunch and water will be provided. We anticipate getting back to the office late afternoon leaving an hour or so for discussion.

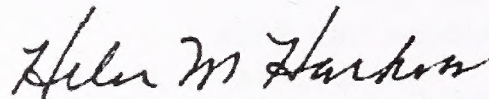
The BLM will provide \$200/day each for up to two tribal representatives for their subject matter expertise, lodging and other travel expenses unless the individual is a salaried tribal staff member. Tribes are welcome to bring additional representatives at their own expense. Reimbursements will be paid by check after the meeting.



A block of rooms at the government rate has been set aside at the Blue Spruce Hotel in Meeker (970) 878- 0777. Participants are asked to call the hotel directly and provide their own credit card for their rooms by referencing the "BLM" room block. Hotel reservations must be made by April 25, 2012, as all unreserved rooms will be released after that date. Reservations may be made after that date if rooms are still available.

Please call Sherri Thompson at (303) 239-3758 to confirm your attendance at this consultation meeting or if you need further information. Thank you for your interest in this project. We look forward to working with the tribes so we can assure that our land management activities consider and protect places of importance.

Sincerely,



Helen M. Hankins,  
State Director

This letter also sent to:

Ms. Betsy Chapoose  
Ute Indian Tribe of the Uintah and Ouray Reservation  
P.O. Box 190  
Ft. Duchesne, Utah 84026

(h) Ute Mountain Ute Tribe



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093  
[www.blm.gov/co](http://www.blm.gov/co)



In Reply Refer To:  
3900 (WO-320)

APR 11 2012

Mr. Terry Knight  
Ute Mountain Ute Tribe  
P.O. Box 189  
Towaoc, Colorado 81334

Dear Mr. Knight:

During a recent meeting between the Ute Mountain Ute Tribe and the Colorado Bureau of Land Management (BLM), you asked the BLM to hold a meeting with the cultural representatives of the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Ute Indian Tribe of the Uintah & Ouray Reservation, and the Eastern Shoshone Tribe regarding the protection of wickiup sites in the Oil Shale and Tar Sands project area. You had expressed specific concerns with protecting the wickiup sites located in the Yellow Creek area of Rio Blanco County, Colorado.

The Colorado BLM is inviting you and the cultural representatives of the Southern Ute, the Eastern Shoshone, and the Ute Indian Tribe of the Uintah & Ouray Reservation to a consultation meeting and field tour of the Yellow Creek area on May 2, 2012. We intend to look at a few representative sites and the overall area, and would appreciate your help to discuss appropriate means of protection for these sites and to identify a protection boundary around them.

Wednesday, May 2, 2012, will be a full day beginning at 8:00 a.m. We will meet at the BLM White River Field Office, located at 220 East Market Street, Meeker, Colorado, for a brief overview of the project and to answer any questions you may have and then will leave for the field to look at these sites later that morning. A sack lunch and water will be provided. We anticipate getting back to the office late afternoon leaving an hour or so for discussion.

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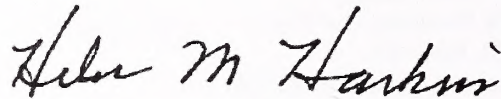
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their own credit card for their rooms by referencing the "BLM" room block. Hotel reservations must be made by April 25, 2012, as all unreserved rooms will be released after that date. Reservations may be made after that date if rooms are still available.

Please call Sherri Thompson at (303) 239-3758 to confirm your attendance at this consultation meeting or if you need further information. Thank you for your interest in this project. We look forward to working with the tribes so we can assure that our land management activities consider and protect places of importance.

Sincerely,

A handwritten signature in cursive script, reading "Helen M. Hankins".

Helen M. Hankins,  
State Director

**ATTACHMENT 2:**  
**STATE HISTORIC PRESERVATION OFFICE CORRESPONDENCE**



## (a) Colorado, Utah, and Wyoming State Historic Preservation Offices



## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093  
[www.blm.gov/co](http://www.blm.gov/co)



In Reply Refer To:  
8100 (CO-931)

SEP 22 2011

Mr. Edward Nichols  
State Historic Preservation Officer  
Colorado Historical Society  
1560 Broadway, Suite 400  
Denver, Colorado 80202

Dear Mr. Nichols:

The Bureau of Land Management (BLM) is now preparing a *Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*. The BLM is seeking consultation with you to meet its obligations under Section 106 of the National Historic Preservation Act and to obtain information useful to the planning decisions that will result from this PEIS.

In 2008, the BLM amended ten land use plans in Colorado, Utah, and Wyoming to make approximately 2,000,000 acres available for potential development of oil shale, and approximately 431,224 acres available for development of tar sands<sup>1</sup>. The BLM has decided to take a fresh look at the land use plan allocation decisions made in 2008 to consider which lands should be open to future leasing of oil shale and tar sands resources. As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for the total number of acres allocated in the 2008 decision to continue to be available for potential development of oil shale and tar sands resources.

This PEIS will analyze amending pertinent BLM Resource Management Plans<sup>2</sup> to identify any areas that may be excluded from future oil shale and tar sands leasing in these three states. Specifically, the BLM will decide whether any changes should be made to the existing land use allocation decisions, and will consider amending the applicable resource management plans to specify whether any areas in Colorado, Utah, and Wyoming currently open for future leasing and development should

<sup>1</sup> *Proposed Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, September 2008.

*Approved Resource Management Plan Amendments/Record of Decision (ROD) for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, November 2008.

<sup>2</sup> The White River RMP, the Grand Junction RMP, the Glenwood Springs RMP, the Vernal RMP, the Price RMP, the Richfield RMP, the Monticello RMP, the Kemmerer RMP, the Rawlins RMP, and the Green River RMP.



not be made available for such leasing and development. The BLM does not currently expect to add areas to the current allocation and will notify you if such a change should occur. The area under consideration is identified in the enclosed map (Enclosures).

The BLM will also identify cultural and tribal issues not addressed in the 2008 PEIS based on any new information obtained since that time, and may develop additional mitigation measures based on new information regarding cultural and tribal resources in the areas allocated for oil shale and tar sands development. Your office has already been contacted by Argonne National Laboratory, BLM's contractor for this project, to update the 2008 analysis; we appreciate your assistance with this query.

We are also inviting your comments on the following:

- Recommendations for areas which should be excluded from future allocation based on:
  - outstanding cultural and/or tribal resources, or
  - the potential for irresolvable management conflicts, such as areas where it would be difficult or impossible to avoid, minimize, or mitigate impacts from future development;
- Any other issues or concerns you may have regarding this PEIS.

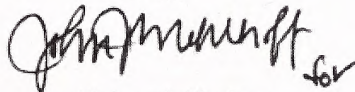
Enclosed also please find a list of interested parties that the BLM is contacting at this time. Please advise us if there are other parties we should contact.

Mr. Dan Haas, our State Archaeologist, will be contacting you shortly to consult with you on this project and to discuss any questions you may have. If you have comments or concerns please send them to Mr. Haas at the address in the letterhead or by email at [dhaas@blm.gov](mailto:dhaas@blm.gov) within the next 30 days. Your time and consideration are greatly appreciated.

If you have any questions or require further clarification regarding the project please call Mr. Haas at (303) 239-3647. We have also developed a web site specific to this project where users can gain further information, sign up for web news and up-dates, as well as submit comments. The address is: <http://ostseis.anl.gov>.

We look forward to our interaction and discussions.

Sincerely,



Helen M. Hankins  
State Director

/s/ John Mehlhoff  
Acting

Enclosures

cc: Kent Walter, Manager, BLM, White River Field Office (w/o enclosures)  
Catherine Robertson, Manager, BLM, Grand Junction Field Office (w/o enclosures)  
Steve Bennett, Manager, BLM, Colorado River Valley Field Office (w/o enclosures)

bcc: CON030: ALeavitt-Reynolds (w/o enclosures)  
CON040: ELeifeld (w/o enclosures)  
CON041: KBowen (w/o enclosures)

Appropriate project maps were sent to each SHPO.



## **Oil Shale-Tar Sands 2012 PEIS**

### **Interested Parties**

#### **Colorado**

Old Spanish Trail Association, Grand Junction local chapter  
Dominguez Archaeological Research Group Inc.

#### **Utah**

Colorado Plateau Archaeological Alliance\*  
LDS Church History  
National Trust for Historic Preservation\*  
Nine Mile Canyon Coalition\*  
Utah Rock Art Research Association\*  
Utah Professional Archaeological Council

#### **Wyoming**

Oregon-California Trails Association\*  
Alliance for Historic Wyoming  
Tracks Across Wyoming

#### **Other**

Old Spanish Trail Association  
NPS-National Historic Trails, Salt Lake City and Santa Fe offices  
The Nature Conservancy\*

#### **Plaintiffs**

Colorado Environmental Coalition\*  
Western Colorado Congress\*  
Wilderness Workshop\*  
Biodiversity Conservation Alliance\*  
Southern Utah Wilderness Alliance\*  
Red Rock Forests\*  
Western Resource Advocates\*  
National Wildlife Federation\*  
Center for Biological Diversity\*  
The Wilderness Society\*  
Natural Resources Defense Council\*  
Defenders of Wildlife\*  
Sierra Club\*

---

\*commented on cultural resources for the 2008 PEIS

September 2011, Initial Notification Letter – SHPO Distribution List					
Name	Contact	Address1	City	St	Zip
Utah SHPO	Lori Hunsaker	300 S. Rio Grande Street	Salt Lake City	UT	84101
Colorado SHPO	Edward Nichols	1200 Broadway	Denver	CO	80203
Wyoming SHPO	Mary Hopkins	2301 Central Avenue	Cheyenne	WY	82002





## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82003-1828

In Reply Refer To:  
3900 (930)  
8100

JAN 20 2012

Mary Hopkins  
State Historic Preservation Officer  
2301 Central Avenue  
Cheyenne, WY 82002

Dear Ms. Hopkins:

Enclosed please find the *Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. The Bureau of Land Management (BLM) has prepared this Draft PEIS in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA). As a follow-up to our initial letter September 27, 2011, inviting you to engage in consultation on this planning initiative, the BLM invites you to review the Draft PEIS and provide any additional information or comments relating to historic and cultural resources. The BLM welcomes your input as it fulfills its obligations under Section 106 of the National Historic Preservation Act (NHPA) regarding the proposed undertaking, i.e., the potential amendment of ten BLM Resource Management Plans (RMPs) in Colorado, Utah, and Wyoming to allocate lands as "open" or "closed" to potential leasing for oil shale and tar sands development.

As described in the Draft PEIS, the BLM is examining proposed land use allocation decisions for potential availability of oil shale and tar sands leasing that will provide future management direction as part of the RMP, but will not authorize any on the ground activities. See Draft PEIS, Chapter 1, Section 1.1, Text box. The BLM recognizes that decisionmaking regarding the potential leasing and development of oil shale and tar sands resources would occur in three stages. The first stage would be accomplished through the development of the current PEIS process, which could lead to a Record of Decision (ROD) regarding amendments to land use allocations to open or close areas as available for potential leasing. The second stage would be the BLM's consideration of lease applications submitted by interested parties, and the third stage would be the BLM's consideration of site-specific plans of development for leased areas. See Draft PEIS, Chapter 1, Section 1.1, Text box. The second and third stages would require compliance with both NEPA, Section 106 of the NHPA, as well as other pertinent laws, regulations, and policies. See Draft PEIS, Chapter 3, Section 3.9.1.

A BLM representative will contact you to ensure that you have received this letter and the attached Draft PEIS, and to answer any questions you may have regarding historic properties and the potential effects the proposed land use plan amendments may have on such properties. We will also ask if you would like to meet to discuss these or other concerns with our project manager, cultural resources program representative, or other appropriate BLM staff or managers. You may also submit comments regarding historic properties individually to the BLM contact listing below, or as part of the NEPA comment process.



The BLM is accepting comments on Draft PEIS through the NEPA process for ninety (90) calendar days following the U.S. Environmental Protection Agency's publication of its *Notice of Availability* in the *Federal Register*.

The BLM will hold public open house meetings for the purposes of providing the public an overview of the document and responding to questions about the Draft PEIS. These public meetings will be scheduled throughout the area covered by the PEIS and will be announced through the public media in the near future and on the BLM website at <http://osts.eis.anl.gov>.

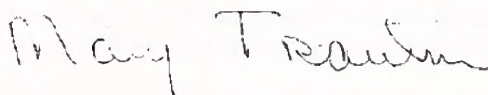
Your review and comments on the Draft PEIS are critical to the success of this planning effort. If you wish to submit comments on the Draft PEIS, we suggest that you make them as specific as possible. Comments will be more helpful if they include suggested changes, sources, or methodologies, and reference to a section or page number. Comments containing only opinions or preferences will be considered and included as part of the decisionmaking process, although they will not receive a formal response from the BLM.

Comments may be submitted electronically at <http://ostseis.anl.gov/involve/comments/index.cfm>. A comment form can be found on-line at this site. Comments may also be submitted by mail to BLM Oil Shale and Tar Sands PEIS, Argonne National Laboratory, EVS Division, Building 240, 9700 South Cass Avenue, Argonne, Illinois 60439. To facilitate analysis of comments and information submitted, we strongly encourage you to submit comments in electronic format.

Before including your address, phone number, e-mail address or other personal identifying information, you should be aware your entire comment, including your personal identifying information, may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Thank you for your interest in the *Draft PEIS and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. We appreciate the information and suggestions you contribute to the planning process. For additional information or clarification regarding this document, the planning process or questions related to Section 106 of the NHPA, please contact Ranel Stephenson Capron, Deputy Preservation Officer, at the address above, by phone at 307-775-6108, or by email at [rcapron@blm.gov](mailto:rcapron@blm.gov). You may also visit the Web site at <http://osts.eis.anl.gov>.

Sincerely,



Donald A. Simpson  
State Director

Enclosure

September 2011, Initial Notification Letter – SHPO Distribution List					
Name	Contact	Address1	City	St	Zip
Utah SHPO	Lori Hunsaker	300 S. Rio Grande Street	Salt Lake City	UT	84101
Colorado SHPO	Edward Nichols	1200 Broadway	Denver	CO	80203
Wyoming SHPO	Mary Hopkins	2301 Central Avenue	Cheyenne	WY	82002



**(b) Colorado State Historic Preservation Office**

October 31, 2011

Dan Haas, State Archaeologist  
Bureau of Land Management  
Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093

DOI-BLM  
CO STATE OFFICE  
COSO MAIL ROOM  
2011 NOV -4 PM 2:41

Re: Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming (CHS #48519)

Dear Mr. Haas:

Thank you for your office's correspondence dated September 22, 2011 (received by our office on October 3, 2011) regarding the captioned project. The letter invited our comments regarding recommendations for areas to be excluded from future allocations to this project, specifically areas of outstanding cultural and/or tribal resources or areas where potentially irresolvable conflicts might be encountered.

We apologize for the delay in responding; but we are not quite certain what it is you are requesting from us at this time. The immense size of the area involved in the proposed project (approximately 360,000 acres) and the lack of information as to how the program will actually be implemented, given that there is not an economically viable way to extract and process oil shale in this area, renders it difficult to respond to your request for recommendations. Your questions deal with general issues as to be more appropriately addressed by a historic context for the project area. Although a Class I Cultural Resource Overview was assembled by Dan O'Rourke and others in 2007, it is little more than a tabular inventory of sites in the area and report titles of archaeological work. A historic context would actually draw these data together in a meaningful and critical synthesis and provide us with a guide for both of our offices in future consultations.

We also note that our January 14, 2009 correspondence to your office included several comments regarding the revised draft programmatic agreement (PA). We are wondering whether our comments and others have been incorporated into a new draft, and what the status of the PA is.

Given these questions, we recommend that we schedule a conference call or meeting with BLM staff to become acquainted with the current status of the project as well as to discuss how consultation with our office may best be of benefit to the BLM at this stage of the project.

Thank you for the opportunity to comment. If we may be of further assistance please contact Dan Corson, Intergovernmental Services Director, at (303) 866-2673 or at [dan.corson@state.co.us](mailto:dan.corson@state.co.us)

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward C. Nichols".  
for Edward C. Nichols  
State Historic Preservation Officer  
ECN/DWC





May 4, 2012

BLM Oil Shale and Tar Sands PEIS  
Argonne National Laboratory  
EVS Division  
Building 240  
9700 South Cass Avenue  
Argonne, Illinois 60439

Re: Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (CHS #48519)

To Whom it May Concern:

Thank you for your correspondence dated January 25, 2012 (received by our office on February 6, 2012) and for the opportunity to discuss this project with both Dan Haas and Sherri Thompson on April 11, 2012. Their formal presentation of possible oil shale development within the Piceance Basin study area in Colorado certainly helped us understand the nature of this undertaking.

We recognize that BLM is currently in the initial (land use planning) stage of what is described as a three-step process. Currently the commercial viability and development for this new technology is unknown, but is actively being studied through ongoing research, development, and demonstration (RD&D) lease analysis. We anticipate that additional Section 106 consultation will occur with our office for each of these subsequent steps including BLM lease review and the consideration of site-specific development plans.

Under the process established for the protection of cultural resources as required by Section 106 of the National Historic Preservation Act (Section 106) and implemented through 36 CFR 800, it is the statutory requirement of the Federal agency to fulfill the procedural obligation of Section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for Section 106 compliance (36 CFR 800.2). The lead agency official remains legally responsible for all required findings and determinations if the services of a consultant have been utilized for the purpose of obtaining recommendations regarding National Register-eligibility and project effect (36 CFR 800.2(a)(3)) or if an applicant for Federal assistance has been authorized by the lead agency to initiate consultation with the State Historic Preservation Officer (36 CFR 800.2(c)(4)).

The findings from the Section 106 studies can inform the National Environmental Policy Act (NEPA) studies, such as including mitigation measures identified under Section 106 into the NEPA decision document. Once we receive the Section 106 studies, we will be able to fully complete our reviews under both NHPA and NEPA.

As such, we recommend that a cultural resources survey be completed for the individual site-specific development plans prior to mineral extraction to document all the historic properties within the project area and to determine the potential effects to these resources as a result of the proposed undertaking.

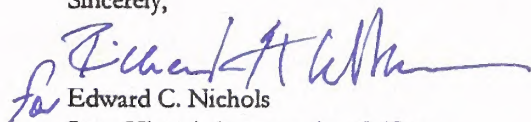
[WWW.HISTORYCOLORADO.ORG](http://WWW.HISTORYCOLORADO.ORG)

HISTORY COLORADO CENTER 1200 BROADWAY DENVER COLORADO 80203



Thank you for the opportunity to comment. If we may be of further assistance please contact Mark Tobias, Section 106 Compliance Manager, at (303) 866-4674 or at [mark.tobias@state.co.us](mailto:mark.tobias@state.co.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward C. Nichols", is written over the printed name.

Edward C. Nichols  
State Historic Preservation Officer  
ECN/MAT



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Colorado State Office

2850 Youngfield Street

Lakewood, Colorado 80215-7210

www.co.blm.gov



In Reply Refer To:  
3900 (CO-920)

SEP 07 2012

Mr. Edward Nichols  
State Historic Preservation Officer  
History Colorado  
1200 Broadway  
Denver, Colorado 80203

Dear Mr. Nichols:

This letter continues consultation with your office regarding the Bureau of Land Management's (BLM) proposal to amend 10 land use plans in Colorado, Utah, and Wyoming to designate public lands managed by the BLM as open or closed for application for commercial leasing for oil shale and tar sands development (CHS #48519). The BLM determined that this is an undertaking per the regulations for the National Historic Preservation Act, Section 106 (36CFR800.16(y)) and appreciates your consultation with us to date. We are completing our review for this undertaking and by this letter are asking for your concurrence with our determination of "no historic properties affected." The information presented below describes our analysis in reaching this determination. We assume that if we do not hear from you within 30 days that you concur with our decision.

**Description of the Undertaking:**

In 2008, the BLM amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2,000,000 acres available for potential development of oil shale, and approximately 431,224 acres available for development of tar sands<sup>1</sup>. The BLM has decided to take a fresh look at the land use plan allocation decisions made in 2008 to consider which lands should be open to future leasing of oil shale and tar sands resources. As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven

<sup>1</sup> *Proposed Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, September 2008.  
*Approved Resource Management Plan Amendments/Record of Decision (ROD) for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, November 2008.



commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for the total number of acres allocated in the 2008 decision to continue to be available for potential development of oil shale and tar sands resources.

The BLM proposes to amend pertinent BLM Resource Management Plans<sup>2</sup> (RMP) to identify any areas that may be open or closed to future oil shale and tar sands leasing in these three states. The BLM will decide whether any changes should be made to the existing 2008 land use allocation decisions. The BLM is specifically considering whether to allocate fewer acres of land than in the 2008 decision, thus excluding areas in Colorado, Utah, and Wyoming currently open for leasing and development. No new areas are being considered for allocation as open for lease application.

The area of potential effect (APE) for this decision is defined as the most geologically prospective areas for oil shale and tar sands in Colorado, Utah, and Wyoming. The area under consideration is identified in the attached maps. All National Historic Trails, National Landmarks, and Areas of Critical Environmental Concern, including those identified for their cultural and historical values, are proposed for exclusion from allocation for lease application.

Oil shale and tar sands development would require a three-stage decision-making process. The first stage, which is the subject of this letter, is the proposed amendment of land use plans to allocate lands as open or closed to potential oil shale and/or tar sands leasing and development. The BLM recognizes that the decision to allocate lands does not identify or authorize any future leasing or development, and that the technology for such development is subject to change.

The second stage is the application for a lease to develop the oil shale/tar sands resources. This stage requires full compliance with Section 106 of the National Historic Protection Act (NHPA) prior to the BLM issuing a lease for potential oil shale or tar sands development. The APE for a potential lease would be determined based on the extent of the proposed lease. Government-to-government consultation with affected tribes concerning a proposed lease area would occur at the second stage. The second stage would require consultation with all interested parties. Documentation and inventory would occur at the second stage to identify, evaluate, and mitigate any historic properties in the APE. This effort would include an analysis of existing overview information and a current records and literature search. A Class II or Class III inventory or visual resource inventory may also be required, if necessary, to determine the undertaking's effect on historic properties. Lease areas may be subject to stipulations or other requirements identified during the leasing process. The manager will retain full authority to approve, modify, or deny a lease based on information obtained during the review of the lease, including information on potential effects to historic properties.

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<sup>2</sup> The White River RMP, the Grand Junction RMP, the Glenwood Springs RMP, the Vernal RMP, the Price RMP, the Richfield RMP, the Monticello RMP, the Kemmerer RMP, the Rawlins RMP, and the Green River RMP.

The final stage is the potential approval of a specific plan of development. A plan of development would identify specific locations, facilities, and timing for development. This decision would also require full compliance with Section 106 of the NHPA prior to approval, and may also be subject to stipulations or other requirements identified during the leasing stage to avoid, minimize or mitigate impacts on historic properties. Government-to-government consultation with tribes would occur during this stage to determine if the plan of development would have an effect on properties of concern. Consultation with interested parties would also take place. Detailed field review will take place at this stage, including Class III cultural resource inventories, visual resource inventories, and other site specific reviews as needed.

### **Historic Property Identification**

The level of effort for this first phase, amending land use plans to allocate lands as open or closed to application for lease, is commensurate with the decision being made. The studies undertaken for this decision are summarized in the appropriate sections of the Programmatic Environmental Impact Statement (PEIS) prepared pursuant to the National Environmental Policy Act (NEPA) for this land use plan decision. References to the appropriate sections of this PEIS are included here.

The BLM has conducted a detailed literature search and identified the major types of historic properties likely to occur within the APE. It has also determined that there are numerous known historic properties within the APE and more are likely to be found in subsequent leasing and development stages. This information is detailed in a Class I Cultural Resource Overview<sup>3</sup> prepared for the 2008 decision, with information updated for the current proposed plan amendments and summarized in the PEIS (Section 3.9).

The BLM also prepared an ethnographic overview<sup>4</sup> for the 2008 decision that identified the types of sites likely to be of interest to tribes that are likely to occur in the APE. Some of these site types are already known to exist within the APE and may be subject to further investigation in the subsequent lease and development stages. This information is summarized in the PEIS (Section 3.10).

In addition to this research, the BLM has actively engaged in consultation with you and the other relevant State Historic Preservation Officers (SHPO); notified the Advisory Council on Historic Preservation and invited their participation; identified interested parties and consulted with those interested in doing so; invited 28 tribes to consult and followed up with eight tribes expressing an interest in the project. The BLM has met its responsibilities to seek and consider the views of the public through the public

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<sup>3</sup>O'Rourke, D., et al., 2007, *Class I Cultural Resource Overview for Oil Shale and Tar Sands Areas in Colorado, Utah, and Wyoming*, prepared by Argonne National Laboratory, Argonne, Ill., for U.S. Department of the Interior, Bureau of Land Management, Nov.

<sup>4</sup>Bengston, G., 2007, unpublished information, Argonne National Laboratory, Argonne, Ill.



involvement process associated with the 36 CFR 800.2(d)(3). The above consultation efforts are detailed in the PEIS, in Appendix L<sup>5</sup>.

Few major issues or concerns were identified by our consulting partners. Several parties raised concerns regarding National Historic Trails and these have been addressed in the PEIS (Section 2.3.3). As a protective measure for purposes of this oil shale planning initiative, regardless of the specific provisions of the applicable RMP regarding other allowable activities, a corridor extending at least 0.25 miles on either side of the trail would be excluded from commercial oil shale leasing. The BLM anticipates conducting appropriate inventories of trail resources to inform environmental analysts prior to any leasing and/or development decisions to determine the area of potential impact to protect resources, qualities, values, and uses of the trails within the view shed. Several tribes identified concerns with cultural resources in the Yellow Creek area, Moffat County, Colorado within the APE. This area contains a high density of wickiup sites comprising a cultural landscape they would like to see unaffected from development. The BLM conducted additional consultation with these tribes, including field visits to wickiup sites in this area to better inform our analyses (Section 7.2). Other tribes noted an area of religious concern in a portion of the Uintah and Ouray Reservation that lies outside the areas open to leasing. These concerns will be addressed during subsequent stages when leasing and possible development are proposed, and the areas of impact as well as the types of impacts are better defined. Tribes, as well as other consulting parties, generally expressed interest in being kept informed and consulted during subsequent stages when more information is available. Future compliance with Section 106 will ensure this consultation occurs.

#### **No Historic Properties Affected**

The BLM determined that no historic properties will be affected by the amendment of certain land use plans to allocate lands as open or closed for oil shale or tar sands lease application. This determination is based on the fact that the decision to allocate lands as open or closed to potential oil shale and tar sands leasing does not approve any on-the-ground activities and does not restrict any managers' authority to fully consider the potential effects on historic properties prior to the potential offer for leasing or development, including the ability to approve, modify, or deny a lease application or development proposal based on consideration of such effects. In fact, the BLM is only considering whether to allocate fewer acres of land than in the 2008 decision, and is not considering new areas to be allocated as open for lease application. Secondly, the current status of oil shale and tar sands development technology is not sufficiently defined to identify with certainty the types of impacts that might occur on historic properties if areas were leased and developed. Therefore the analyses conducted for this allocation decision, while they inform this decision, are likely to provide background information for any future leasing or development decisions, which will be subject to full compliance with Section 106 at that time.

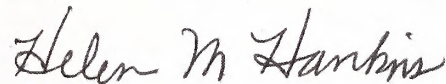
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<sup>5</sup> *Final Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*, 2012.

for any future leasing or development decisions, which will be subject to full compliance with Section 106 at that time.

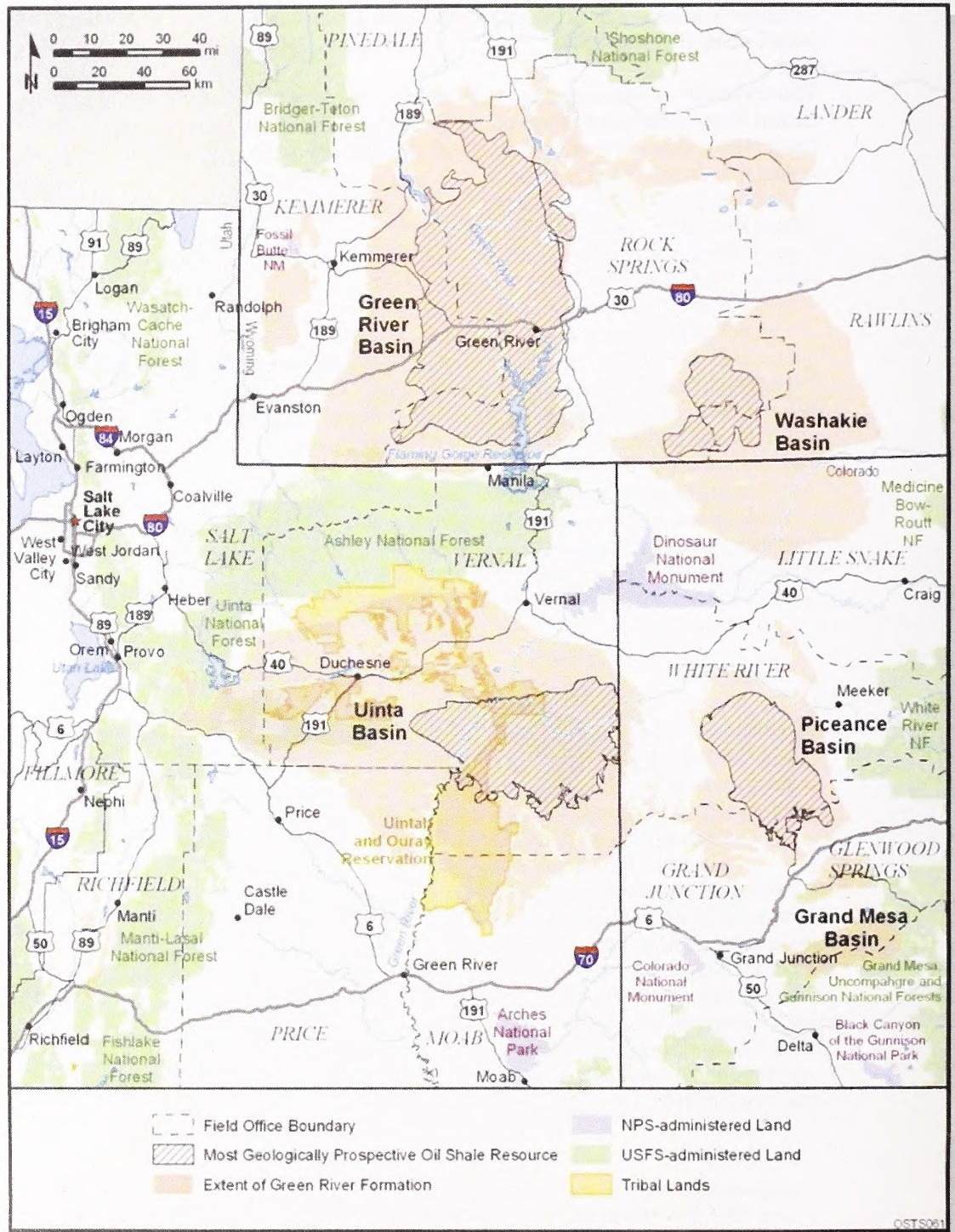
Thank you for your consideration of this letter. Should you have any questions please contact Sherri Thompson, Project Manager, at (303) 239-3758 or for cultural matters, Daniel Haas, Deputy Preservation Officer, at (303) 239-3647. We look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Helen M. Hankins". The ink is dark and the signature is fluid.

Helen M. Hankins  
State Director









September 26, 2012

Helen M. Hankins  
State Director  
United States Department of the Interior  
Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7210

2012 SEP 28 AM 11:14  
CO STATE OFFICE  
COSO  
DOI-ELM

RE: Proposed amendments to ten land use plans in Colorado, Utah, and Wyoming to designate public lands managed by the BLM as open or closed for application for commercial leasing for oil shale and tar sands development  
History Colorado Project Number 48519

Dear Ms. Hankins:

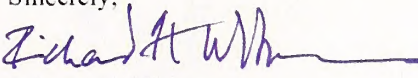
Thank you for your letter dated September 7, 2012 (received in our office on September 12, 2012) regarding the captioned project. We appreciate your summary and explanation of both the project and the process to be followed for Section 106 consultation. We look forward to working with the BLM pursuant to the outlined process.

We agree with your statement of the Area of Potential Effects of the project.

We concur with your finding that no historic properties will be affected by the proposed amendments based upon your statement that the BLM is only considering whether to allocate fewer areas as open for lease application. If additional areas are considered to be allocated, we believe that our recommendation would be for an adverse effect finding based upon 36 CFR 800.5, which addresses the criteria of adverse effect and uses of the word "may" as this includes the possibility of an adverse effect to unidentified properties.

If you have any questions, please feel free to contact our office through Dan Corson, Intergovernmental Services Director, at (303) 866-2673 or [dan.corson@state.co.us](mailto:dan.corson@state.co.us)

Sincerely,

*for*   
Edward C. Nichols  
State Historic Preservation Officer



## (c) Utah State Historic Preservation Office



## State of Utah

GARY R. HERBERT  
GovernorGREG BELL  
Lieutenant Governor

## Department of Community and Culture

JULIE FISHER  
Executive Director

## State History

WILSON G. MARTIN  
Acting Director

APR 05 2012

SY	RP&M
ARO	M&LA
OC	DSE
EEO	CF
LAW	LEAD Resp

February 23, 2012

Donald A. Simpson  
State Director  
Bureau of Land Management  
Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82003-1828

RE: "Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administrated by the BLM in Colorado, Utah and Wyoming"

For future correspondence please reference Case No. 11-2200

Dear Mr. Simpson:

The Utah State Historic Preservation Office received your request for our comment on the above referenced undertaking on February 6, 2012.

USHPO wishes to acknowledge and thank the BLM for the notification concerning the Draft PEIS for the Multistate Oil Shale and Tar Sands undertaking.

This letter serves as our comment on the determinations you have made, within the consultation process specified in §36CFR800.4. If you have questions, please contact me at 801-533-3525 or Jim Dykmann at 801-533-3523.

Sincerely,

Lori Hunsaker  
Deputy State Historic Preservation Officer  
Archaeology

UTAH STATE  
HISTORY

UTAH STATE HISTORICAL SOCIETY  
ANTIQUITIES  
HISTORIC PRESERVATION  
RESEARCH CENTER & COLLECTIONS

RECEIVED  
DOI-BLM  
CHEYENNE, WYOMING  
2012 APR -5 AM 10:00

**United States Department of the Interior****BUREAU OF LAND MANAGEMENT**

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov/ut/st/en.html>IN REPLY REFER TO:  
3900 / (UT-934 )

SEP 10 2012

Mr. Wilson Martin  
State Historic Preservation Officer  
300 South Rio Grande Street  
Salt Lake City, Utah 84101

Dear Mr. Martin:

This letter continues consultation with your office regarding the Bureau of Land Management's (BLM) proposal to amend 10 land use plans in Colorado, Utah, and Wyoming to designate public lands managed by the BLM as open or closed for application for commercial leasing for oil shale and tar sands development. The BLM determined that this is an undertaking per the regulations for the National Historic Preservation Act, Section 106 (36CFR800.16(y)) and appreciates your consultation with us to date. We are completing our review for this undertaking and by this letter are asking for your concurrence with our determination of "no historic properties affected." The information presented below describes our analysis in reaching this determination. We assume that if we do not hear from you within thirty days that you concur with our decision.

**Description of the Undertaking:**

In 2008, the BLM amended ten land use plans in Colorado, Utah, and Wyoming to make approximately 2,000,000 acres available for potential development of oil shale, and approximately 431,224 acres available for development of tar sands<sup>1</sup>. The BLM has decided to take a fresh look at the land use plan allocation decisions made in 2008 to consider which lands should be open to future leasing of oil shale and tar sands resources. As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for the total number of acres allocated in the 2008 decision to continue to be available for potential development of oil shale and tar sands resources.

<sup>1</sup> *Proposed Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, September 2008.

*Approved Resource Management Plan Amendments/Record of Decision (ROD) for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, November 2008.

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The BLM proposes to amend pertinent BLM Resource Management Plans<sup>2</sup> to identify any areas that may be open or closed to future oil shale and tar sands leasing in these three states. The BLM will decide whether any changes should be made to the existing 2008 land use allocation decisions. The BLM is specifically considering whether to allocate fewer acres of land than in the 2008 decision, thus excluding areas in Colorado, Utah, and Wyoming currently open for leasing and development. No new areas are considered for allocation as open for lease application.

The area of potential effect for this decision is defined as the most geologically prospective areas for oil shale and tar sands in Colorado, Utah, and Wyoming. The area under consideration was identified in maps sent previously. All National Historic Trails, National Landmarks, and Areas of Critical Environmental Concern, including those identified for their cultural and historical values are proposed for exclusion from allocation for lease application.

Oil shale and tar sands development would require a three-stage decision-making process. The first stage, which is the subject of this letter, is the proposed amendment of land use plans to allocate lands as open or closed to potential oil shale and/or tar sands leasing and development. The BLM recognizes that the decision to allocate lands does not identify or authorize any future leasing or development, and that the technology for such development is subject to change.

The second stage is the application for a lease to develop the oil shale/tar sands resources. This stage requires full compliance with Section 106 of the NHPA prior to the BLM issuing a lease for potential oil shale or tar sands development. The APE for a potential lease would be determined based on the extent of the proposed lease. Government-to-government consultation with affected tribes concerning a proposed lease area would occur at the second stage. The second stage would require consultation with all interested parties. Documentation and inventory would occur at the second stage in order to identify, evaluate, and mitigate any historic properties in the APE. This effort would include an analysis of existing overview information and a current records and literature search. A Class II or Class III inventory or visual resource inventory may also be required, if necessary, to determine the undertaking's effect on historic properties. Lease areas may be subject to stipulations or other requirements identified during the leasing process. The manager will retain full authority to approve, modify, or deny a lease based on information obtained during the review of the lease, including information on potential effects to historic properties.

The final stage is the potential approval of a specific plan of development. A plan of development would identify specific locations, facilities, and timing for development. This decision would also require full compliance with Section 106 of the NHPA prior to approval, and may also be subject to stipulations or other requirements identified during the leasing stage to avoid, minimize or mitigate impacts on historic properties. Government-to-government consultation with tribes would occur during this stage to determine if the plan of development would have an effect on properties of concern. Consultation with interested parties would also take place. Detailed field review will take place at this stage, including Class III cultural resource inventories, visual resource inventories, and other site specific reviews as needed.

### Historic Property Identification

<sup>2</sup> The White River RMP, the Grand Junction RMP, the Glenwood Springs RMP, the Vernal RMP, the Price RMP, the Richfield RMP, the Monticello RMP, the Kemmerer RMP, the Rawlins RMP, and the Green River RMP.

The level of effort for this first phase, amending land use plans to allocate lands as open or closed to application for lease, is commensurate with the decision being made. The studies undertaken for this decision are summarized in the appropriate sections of the Programmatic Environmental Impact Statement (PEIS) prepared pursuant to the National Environmental Policy Act (NEPA) for this land use plan decision. References to the appropriate sections of this PEIS are included here.

The BLM has conducted a detailed literature search and identified the major types of historic properties likely to occur within the APE. It has also determined that there are numerous known historic properties within the APE and more are likely to be found in subsequent leasing and development stages. This information is detailed in a Class I Cultural Resource Overview<sup>3</sup> prepared for the 2008 decision, with information updated for the currently proposed plan amendments and summarized in the PEIS (Section 3.9).

The BLM also prepared an ethnographic overview<sup>4</sup> for the 2008 decision which has identified the types of sites likely to be of interest to tribes that are also likely to occur in the APE. Some of these site types are already known to exist within the APE and may be subject to further investigation in the subsequent lease and development stages. This information is summarized in the PEIS (Section 3.10).

In addition to this research the BLM has actively engaged in consultation with you and the other relevant State Historic Preservation Officers (SHPO); notified the Advisory Council on Historic Preservation and invited their participation; identified interested parties and consulted with those interested in doing so; invited 28 tribes to consult and followed up with eight tribes expressing an interest in the project. The BLM has met its responsibilities to seek and consider the views of the public through the public involvement process associated with the (36 CFR 800.2(d)(3)). The above consultation efforts are detailed in the PEIS, in Appendix L<sup>5</sup>.

Few major issues or concerns were identified (including Oregon Trail and Pony Express) by our consulting partners. Several parties raised concerns regarding National Historic Trails and these have been addressed in the PEIS (Section 2.3.3). As a protective measure for purposes of this oil shale planning initiative, regardless of the specific provisions of the applicable Resource Management Plan regarding other allowable activities, a corridor extending at least 0.25 mi on either side of the trail would be excluded from commercial oil shale leasing. It is anticipated that appropriate inventories of trail resources will be conducted to inform the appropriate NEPA and other environmental reviews prior to any leasing and/or development decisions for those trails where a corridor has not yet been established, to determine the area of potential impact to protect resources, qualities, values, and associated settings, and primary use or uses of the trails within the view shed. Several tribes identified concerns with cultural resources in the Yellow Creek area, Moffat County, Colorado

<sup>3</sup>O'Rourke, D., et al., 2007, *Class I Cultural Resource Overview for Oil Shale and Tar Sands Areas in Colorado, Utah, and Wyoming*, prepared by Argonne National Laboratory, Argonne, Ill., for U.S. Department of the Interior, Bureau of Land Management.

<sup>4</sup>Bengston, G., 2007, unpublished information, Argonne National Laboratory, Argonne, Ill.

<sup>5</sup>*Final Programmatic Environmental Impact Statement and Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*, 2012.



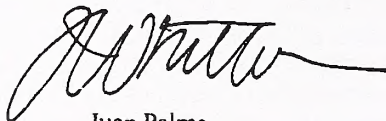
within the APE. This area contains a high density of wickiup sites comprising a cultural landscape that they would like to see unaffected from development. Additional consultation was conducted with these tribes, including field visits to wickiup sites in this area to better inform our analyses (Section 7.2). Other tribes noted an area of religious concern in a portion of the Uintah and Ouray Reservation which lies outside the areas open to leasing. These concerns will be addressed during subsequent stages when leasing and possible development are proposed, and the areas of impact as well as the types of impacts are better defined. Tribes, as well as other consulting parties, generally expressed interest in being kept informed and consulted during subsequent stages when more information is available. Future compliance with Section 106 will ensure this consultation occurs.

#### **No Historic Properties Affected**

The BLM has determined that no historic properties will be affected by the amendment of certain land use plans to allocate lands as open or closed for oil shale or tar sands lease application. This determination is based on the fact that the decision to allocate lands as open or closed to potential oil shale and tar sands leasing does not approve any on-the-ground activities and does not restrict any managers' authority to fully consider the potential effects on historic properties prior to the potential offer for leasing or development, including the ability to approve, modify, or deny a lease application or development proposal based on consideration of such effects. In fact, the BLM is only considering whether to allocate fewer acres of land than in the 2008 decision, and is not considering new areas to be allocated as open for lease application. Secondly, the current status of oil shale and tar sands development technology is not sufficiently defined to identify with certainty the types of impacts that might occur on historic properties if areas were leased and developed. Therefore the analyses conducted for this allocation decision, while they inform this decision, are likely to provide background information for any future leasing or development decisions, which decisions will be subject to full compliance with Section 106 at that time.

Thank you for your consideration of this letter. Should you have any questions please contact Sherri Thompson, Project Manager, at (303) 239-3758 or for cultural matters, Byron Loosle, Deputy Preservation Officer, at (801) 539-4276. We look forward to your response.

Sincerely,



Juan Palma  
FOR State Director

bc: Sherri Thompson, BLM, Colorado SO, 2850 Youngfield Street, Lakewood, CO 80215-7093  
Byron Loosle, BLM- Utah SO (934)

2008-12-11 11:00  
12/11/08  
11:00

**(d) Wyoming State Historic Preservation Office****United States Department of the Interior****BUREAU OF LAND MANAGEMENT**

Wyoming State Office

P.O. Box 1828

Cheyenne, Wyoming 82003-1828

In Reply Refer To:  
8100 (930)  
Rcapron

**AUG 30 2012**

Ms. Mary Hopkins  
State Historic Preservation Officer  
2301 Central Avenue  
Cheyenne, Wyoming 82002

Dear Ms. Hopkins:

This letter continues consultation with your office regarding the Bureau of Land Management's (BLM) proposal to amend 10 land use plans in Colorado, Utah, and Wyoming to designate public lands managed by the BLM as open or closed for application for commercial leasing for oil shale and tar sands development. The BLM determined that this is an undertaking per the regulations for the National Historic Preservation Act (NHPA), Section 106 (36CFR800.16(y)) and appreciates your consultation with us to date. We are completing our review for this undertaking and by this letter are asking for your concurrence with our determination of "no historic properties affected." The information presented below describes our analysis in reaching this determination. We assume that if we do not hear from you within 30 days that you concur with our decision.

**Description of the Undertaking:**

In 2008, the BLM amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2,000,000 acres available for potential development of oil shale, and approximately 431,224 acres available for development of tar sands<sup>1</sup>. The BLM has decided to take a fresh look at the land use plan allocation decisions made in 2008 to consider which lands should be open to future leasing of oil shale and tar sands resources.

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<sup>1</sup> *Proposed Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, September 2008.

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As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for the total number of acres allocated in the 2008 decision to continue to be available for potential development of oil shale and tar sands resources.

The BLM proposes to amend pertinent BLM Resource Management Plans (RMP)<sup>2</sup> to identify any areas that may be open or closed to future oil shale and tar sands leasing in these three States. The BLM will decide whether any changes should be made to the existing 2008 land use allocation decisions. The BLM is specifically considering whether to allocate fewer acres of land than in the 2008 decision, thus excluding areas in Colorado, Utah, and Wyoming currently open for leasing and development. No new areas are considered for allocation as open for lease application.

The area of potential effect for this decision is defined as the most geologically prospective areas for oil shale and tar sands in Colorado, Utah, and Wyoming. The area under consideration is identified in the attached maps. All National Historic Trails, National Landmarks, and Areas of Critical Environmental Concern, including those identified for their cultural and historical values are proposed for exclusion from allocation for lease application.

Oil shale and tar sands development would require a three-stage decisionmaking process. The first stage, which is the subject of this letter, is the proposed amendment of land use plans to allocate lands as open or closed to potential oil shale and/or tar sands leasing and development. The BLM recognizes that the decision to allocate lands does not identify or authorize any future leasing or development, and that the technology for such development is subject to change.

The second stage is the application for a lease to develop the oil shale/tar sands resources. This stage requires full compliance with Section 106 of the NHPA prior to the BLM issuing a lease for potential oil shale or tar sands development. The Area of Potential Effect (APE) for a potential lease would be determined based on the extent of the proposed lease. Government-to-Government consultation with affected tribes concerning a proposed lease area would occur at the second stage. The second stage would require consultation with all interested parties. Documentation and inventory would occur at the second stage in order to identify, evaluate, and mitigate any historic properties in the APE. This effort would include an analysis of existing overview information and a current records and literature search. A Class II or Class III inventory or visual resource inventory may also be required, if necessary, to determine the undertaking's effect on historic properties. Lease areas may be subject to stipulations or other requirements identified during the leasing process. The manager will retain full authority to approve, modify, or deny a lease based on information obtained during the review of the lease, including information on potential effects to historic properties.

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### **Historic Property Identification**

The level of effort for this first phase, amending land use plans to allocate lands as open or closed to application for lease, is commensurate with the decision being made. The studies undertaken for this decision are summarized in the appropriate sections of the Programmatic Environmental Impact Statement (PEIS) prepared pursuant to the National Environmental Policy Act (NEPA) for this land use plan decision. References to the appropriate sections of this PEIS are included here.

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<sup>4</sup>Bengston, G., 2007, unpublished information, Argonne National Laboratory, Argonne, Ill.



the public through the public involvement process associated with the (36 CFR 800.2(d)(3)). The above consultation efforts are detailed in the PEIS, in Appendix L<sup>5</sup>.

Few major issues or concerns were identified by our consulting partners. Several parties raised concerns regarding National Historic Trails and these have been addressed in the PEIS (Section 2.3.3). As a protective measure for purposes of this oil shale planning initiative, regardless of the specific provisions of the applicable RMP regarding other allowable activities, a corridor extending at least 0.25 mi on either side of the trail would be excluded from commercial oil shale leasing. It is anticipated that appropriate inventories of trail resources will be conducted to inform the appropriate NEPA and other environmental reviews prior to any leasing and/or development decisions for those trails where a corridor has not yet been established, to determine the area of potential impact to protect resources, qualities, values, and associated settings, and primary use or uses of the trails within the view shed. Several tribes identified concerns with cultural resources in the Yellow Creek area, Moffat County, Colorado within the APE. This area contains a high density of wickiup sites comprising a cultural landscape that they would like to see unaffected from development. Additional consultation was conducted with these tribes, including field visits to wickiup sites in this area to better inform our analyses (Section 7.2). Other tribes noted an area of religious concern in a portion of the Uintah and Ouray Reservation which lies outside the areas open to leasing. These concerns will be addressed during subsequent stages when leasing and possible development are proposed, and the areas of impact as well as the types of impacts are better defined. Tribes, as well as other consulting parties, generally expressed interest in being kept informed and consulted during subsequent stages when more information is available. Future compliance with Section 106 will ensure this consultation occurs.

#### **No Historic Properties Affected**

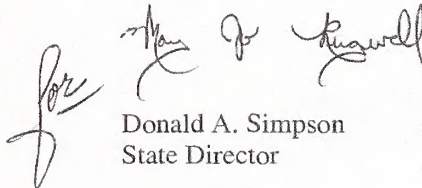
The BLM has determined that no historic properties will be affected by the amendment of certain land use plans to allocate lands as open or closed for oil shale or tar sands lease application. This determination is based on the fact that the decision to allocate lands as open or closed to potential oil shale and tar sands leasing does not approve any on-the-ground activities and does not restrict any managers' authority to fully consider the potential effects on historic properties prior to the potential offer for leasing or development, including the ability to approve, modify, or deny a lease application or development proposal based on consideration of such effects. In fact, the BLM is only considering whether to allocate fewer acres of land than in the 2008 decision, and is not considering new areas to be allocated as open for lease application. Secondly, the current status of oil shale and tar sands development technology is not sufficiently defined to identify with certainty the types of impacts that might occur on historic properties if areas were leased and developed. Therefore the analyses conducted for this allocation decision, while they inform this decision, are likely to provide background information for any future leasing or development decisions, which decisions will be subject to full compliance with Section 106 at that time.

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<sup>5</sup> *Final Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*, 2012.

Thank you for your consideration of this letter. Should you have any questions, please contact Sherri Thompson, Project Manager, at (303) 239-3758 or for cultural matters, Ranel Capron, Deputy Preservation Officer, at (307) 775-6108. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Simpson", is written over the printed name and title.

Donald A. Simpson  
State Director

Attachment



BA 7/20/12

**ARTS. PARKS.  
HISTORY.**

Wyoming State Parks &amp; Cultural Resources

State Historic Preservation Office  
 Barrett Building, 3rd Floor  
 2301 Central Avenue  
 Cheyenne, WY 82002  
 Phone: (307) 777-7697  
 Fax: (307) 777-6421  
<http://wyoshpo.state.wy.us>

September 20, 2012

Donald A. Simpson, State Director  
 U.S.D.I. Bureau of Land Management  
 Wyoming State Office  
 P.O. Box 1828  
 Cheyenne, WY 82003-1828

SEP 21 2012

RD	RP&M
ASD	M&LA
OC	DSS
EEO	CF
LAW	LEAD Resp.

re: U.S.D.I. Bureau of Land Management (BLM), Amendment of Ten (10) Land Use Plans in Colorado, Utah and Wyoming Designating BLM Lands Open or Closed for Application for Commercial Leasing for Oil Shale and Tar Sands Development (SHPO File # 1206JPL016)

Dear Mr. Simpson:

Thank you for consulting with the Wyoming State Historic Preservation Office (SHPO) regarding the above referenced undertaking. We have reviewed the associated report and find the documentation meets the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42).

We concur with your finding that no historic properties, as defined in 36 CFR § 800.16(l)(1), will be affected in Wyoming by the undertaking as planned.

This letter should be retained in your files as documentation of a SHPO concurrence on your finding of no historic properties affected. Please refer to SHPO project #1206JPL016 on any future correspondence regarding this undertaking. If you have any questions, please contact me at 307-777-5497.

Sincerely,



Richard L. Currit  
 Senior Archaeologist

2012 SEP 21 AM 10:00  
 RECEIVED  
 DOI-BLM  
 CHEYENNE WYOMING



Matthew H. Mead, Governor  
 Milward Simpson, Director

**ATTACHMENT 3:**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION CORRESPONDENCE**





United States Department of the Interior  
BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240  
<http://www.blm.gov>



MAR 30 2012

Mr. Reid Nelson  
Director, Office of Federal Agency Programs  
Advisory Council on Historic Preservation  
1100 Pennsylvania Ave, Rm. 803  
Washington DC, 20004-2501

Dear Mr. Nelson:

The Bureau of Land Management (BLM) is currently considering amending ten land use plans in Colorado, Utah, and Wyoming to make public lands available for application to lease for development of oil shale and tar sands resources. The BLM considers this action an undertaking pursuant to Section 106 of the National Historic Preservation Act (NHPA). The BLM's review and consultation activities to date, described below, suggest that this land use planning action is not likely to affect historic properties pursuant to 36 C.F.R. § 800.4(d)(1). However, in accordance with the recently revised National Programmatic Agreement, this undertaking meets the threshold for notifying the Advisory Council on Historic Preservation (ACHP) because it is a non-routine interstate undertaking that is likely to be highly controversial.<sup>1</sup> Accordingly, the BLM is writing you to invite the ACHP participation in this project.

**Background:** In 2008, the BLM amended ten land use plans in Colorado, Utah, and Wyoming to make public lands available for application to lease for development of oil shale and tar sands resources. These 2008 amendments made approximately 2,000,000 acres available for application for leasing and development of oil shale resources and approximately 431,000 acres available for application for leasing and development of tar sands resources. This allocation decision was supported by a Programmatic Environmental Impact Statement (PEIS), prepared pursuant to the National Environmental Policy Act (NEPA), and in compliance with section 369 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 728 (Aug. 8, 2005), and concluded with a Record of Decision (ROD) amending the land use plans.

The BLM consulted with potentially affected tribes, the pertinent State Historic Preservation Officers and the ACHP, as part of its fulfillment of the requirements of section 106 for the 2008 decision. The BLM also completed a cultural resource overview study<sup>2</sup> and an ethnographic study<sup>3</sup> which were summarized in the 2008 PEIS. Pursuant to

<sup>1</sup> Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which the BLM Will Meet Its Responsibilities Under the National Historic Preservation Act.

<sup>2</sup> Class I Cultural Resource Overview for Oil Shale and Tar Sands Areas in Colorado, Utah, and Wyoming.

<sup>3</sup> Ethnohistoric Overview of Native American Land Use in Southwestern Wyoming, Northwestern Colorado, and Eastern Utah.



the NEPA the 2008 PEIS concluded that the alternatives presented for the land use plan allocation decision would not result in any impacts on the environment, including cultural resources. Although the ROD<sup>4</sup> stated that a PA among the BLM, the SHPOs and the ACHP would conclude the Section 106 process, the PA was not completed and a determination of effects pursuant to the NHPA was not defined.

In 2009, several environmental advocacy organizations challenged the ROD on NEPA, Endangered Species (ESA), and Federal Land Policy and Management (FLPMA) grounds. The plaintiffs did not raise any NHPA claims. The parties entered into a settlement agreement in February 2011, and the BLM initiated a new land use planning effort with the publication of a Notice of Intent on April 14, 2011, (76 Fed. Reg. 21003). The 2008 land use plan decisions remain in effect until the current process is completed and a new ROD is signed.

As a result of the settlement agreement and other factors, the BLM is taking a fresh look at the land use plan allocation decisions made in the 2008 ROD to determine whether it is appropriate for these lands to remain available for application to lease for oil shale/tar sands development. Specifically, the BLM is considering amending the applicable Resource Management Plans to specify whether any areas in Colorado, Utah, and Wyoming, currently open for application to lease and develop oil shale or tar sands per the 2008 ROD, should not be made available for application to lease. No new lands outside the 2008 allocations are added for consideration in this decision. The BLM is thus considering a new decision, based on the current PEIS, that will either retain the 2008 allocations (the "No Action" alternative under NEPA) or reduce the acreage allocated in 2008 by varying amounts considered under different alternatives.

**Planning Area:** The study area for oil shale resources includes the most geologically prospective resources of the Green River Formation located in the Piceance, Uinta, Green River, and Washakie Basins in northwestern Colorado, northeastern Utah, and southwestern Wyoming. These encompass about 3,538,038 acres which include 2,138,361 acres of public lands and 158,566 acres of split estate lands. The tar sands study areas consist of eleven Special Tar Sands Areas (STSA) in Utah pursuant to the Combined Hydrocarbon Leasing Act of 1981 (P.L. 97-78). This consists of about 1,026,266 acres, including about 574,357 acres of public land and 82,148 of split estate lands (see attached maps).

**Planning Action:** The decision under consideration in this undertaking is a land use plan allocation decision<sup>5</sup>. Lands identified as open to oil shale and tar sands development as a result of this decision would be available for application to lease, but subject to additional

no  
maps  
included

<sup>4</sup> Record of Decision: Oil Shale and Tar Sands Resources, Resource Plan Amendments. November 2008

<sup>5</sup> A copy of the Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming (January 2012) (Draft PEIS) is provided for your reference. "Allocation" is more fully defined in the DPEIS, Chapter 1, Section 1.1, Text box p 1-1.



NEPA and Section 106 review. In other words, the allocation decision being evaluated here would not authorize any future lease; BLM would retain complete discretion to approve, approve with conditions, or deny lease application, based on a consideration of various factors including effects to historic properties.

Information regarding possible development of oil shale and tar sands resources is highly speculative. The current experimental state of the oil shale and tar sands industries does not allow this PEIS to include sufficient specific information or cumulative impact analyses to BLM-managed resources, including historic properties, to support future leasing decisions within these allocated lands. Indeed, the additional NEPA and subsequent Section 106 analysis will be required to determine the effects of oil shale and tar sands leasing and development when more specific information is known about the specific technologies and associated environmental consequences in the locations being proposed.

The BLM therefore recognizes that decision-making regarding the potential leasing and development of oil shale and tar sands resources would occur in three stages. The first stage would be accomplished through this land use plan amendment process to retain or reduce BLM managed lands currently open to OSTs development. The second stage would be the BLM's consideration of lease applications submitted by project proponents and the third stage would be the BLM's consideration of site-specific plans of development for leased areas (see Draft PEIS, Chapter 1, Section 1.1, Text box, p. 1-2). The second and third stages would require full compliance with both NEPA and Section 106 of the NHPA, as well as with other pertinent laws, regulations, and policies.

**Section 106:** The BLM sees its Section 106 responsibilities as proceeding in accordance with the three stages of decision-making defined above, with full compliance at each stage and a level of effort commensurate to each undertaking (see Draft PEIS, Chapter 3, Section 3.9.1, p. 3-215). The BLM is not using the "phased identification and evaluation" process permitted under 36 C.F.R. 800.4(b)(2) to satisfy its Section 106 obligations for the land use planning decision considered here.

With regard to the allocation decision being considered here, the BLM is meeting its responsibilities under Section 106 as follows.

**Consultation:** The BLM initiated tribal consultation with potentially affected tribes via letter in July and August 2011 and with letters to the SHPOs for Utah, Colorado, and Wyoming in September and October of 2011. The BLM also identified potentially interested parties and invited them to participate as consulting parties. To date the BLM has not received any specific information regarding historic properties or possible effects to them from this undertaking, although several entities have responded expressing an interest. The BLM recently contacted all tribes, SHPOs, and interested parties inviting them to comment under the NEPA on the DPEIS and to invite them again to consult with



us under Section 106. Follow-up calls to the tribes, SHPOs, and interested parties are planned for the next several weeks to see if there is an interest in more substantive discussions with regard to our Section 106 responsibilities.

**Identification of Historic Properties:** The BLM has updated the 2007 Class 1 Cultural Resources Overview and summarized this data to provide a discussion of the types of sites likely to fall within the oil shale/tar sands areas. This discussion indicates that thousands of cultural resource sites of diverse types are known within the potential oil shale/tar sands development areas and that a portion of these are likely to be eligible to the National Register. Site sensitivity maps for prehistoric cultural resources were developed based on correlation of known prehistoric sites with soil families. Despite concerns about data adequacy for this analysis the results are sufficient to indicate that proposed allocation areas include high-sensitivity landscapes, a result that confirms expectations given the large scale of this planning area and its rich cultural history.

No National Register listed historic properties occur within the allocation areas. In addition, the BLM has excluded a number of management areas from development for all alternatives, including National Historic Trails and Areas of Critical Environmental Concern (ACEC). For all but the "No Action" alternative these ACECs include areas recently designated, such as the Nine Mile Canyon ACEC in Utah, with high cultural values. \*

The BLM also reviewed the ethnohistoric information and tribal consultation comments from the 2008 PEIS and has initiated consultation with potentially affected tribes for the current effort. The ethnographic overview suggests types of sites and locations that might be of concern to the tribes which could occur in the planning area. To date, however, no specific areas of religious or cultural significance have been identified by the tribes in the planning area, although both the Kaibab Band of the Paiute Indians and the Navajo Nation identified the Henry Mountains, located between two tar sands STSAs, as sacred.

**Determination of Effects:** To date the BLM has not identified any effects to historic properties as a result of the proposed undertaking or any of the alternatives being proposed. While the BLM has not completed consultation and will make a determination of effects after reviewing all available information, BLM believes that the proposed undertaking is unlikely to affect historic properties for the following reasons:

- Allocation of lands as open or closed to lease application does not authorize or permit any future activity associated with oil shale/tar sands development.
- This proposed allocation decision would not constrain any manager's ability to approve, approve with conditions (to avoid, minimize or mitigate adverse effects), or deny any lease or subsequent project.



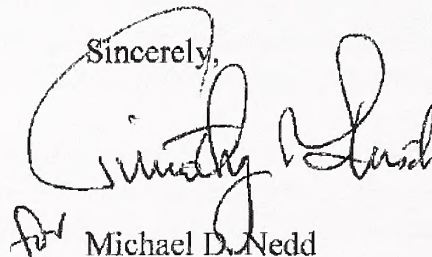
- There is insufficient information to determine effects from future leasing and development decisions. The lack of information regarding the technology and consequent environmental effects of oil shale/ tar sands development precludes a confident assessment of impacts at this stage. Analyses of effects to historic properties must await more definitive information at the leasing stage.

The BLM, at this point, does not anticipate having to resolve adverse effects in accordance with 36 C.F.R. § 800.6 because of its current determination that the proposed undertaking will have no effect on historic properties. ]

The BLM looks forward to working with you as we continue the 106 consultation process for this allocation decision. Thank you for your consideration and we look forward to your response.

Should you wish a briefing on further specifics of this undertaking project and consultation to date, prior to responding to our invitation to consult or at any time, we would be pleased to meet with you to do so. Please contact Kate Winthrop at 202-912-7409, or [kwinthrop@blm.gov](mailto:kwinthrop@blm.gov) to arrange any meetings necessary or to provide further information.

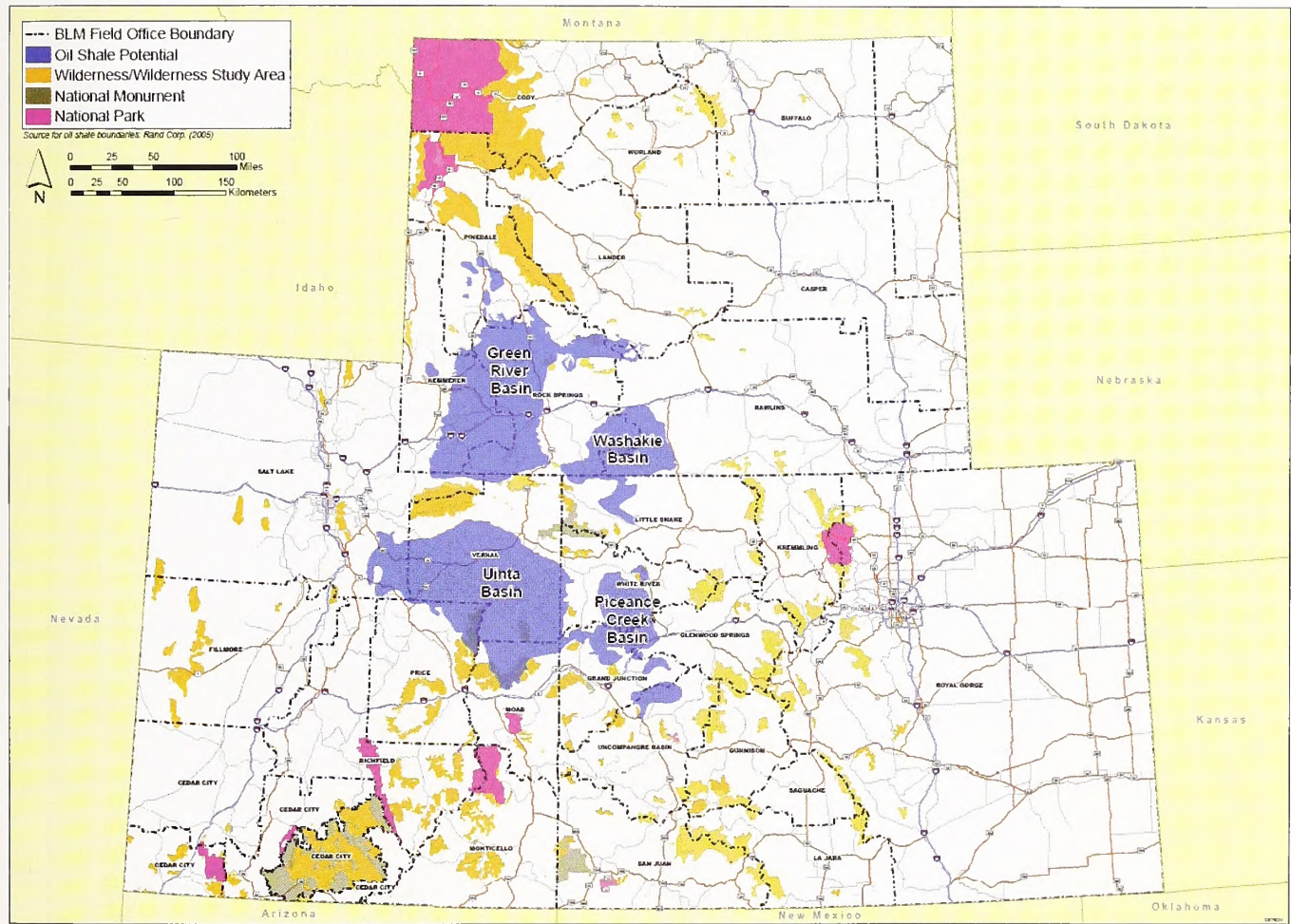
Sincerely,



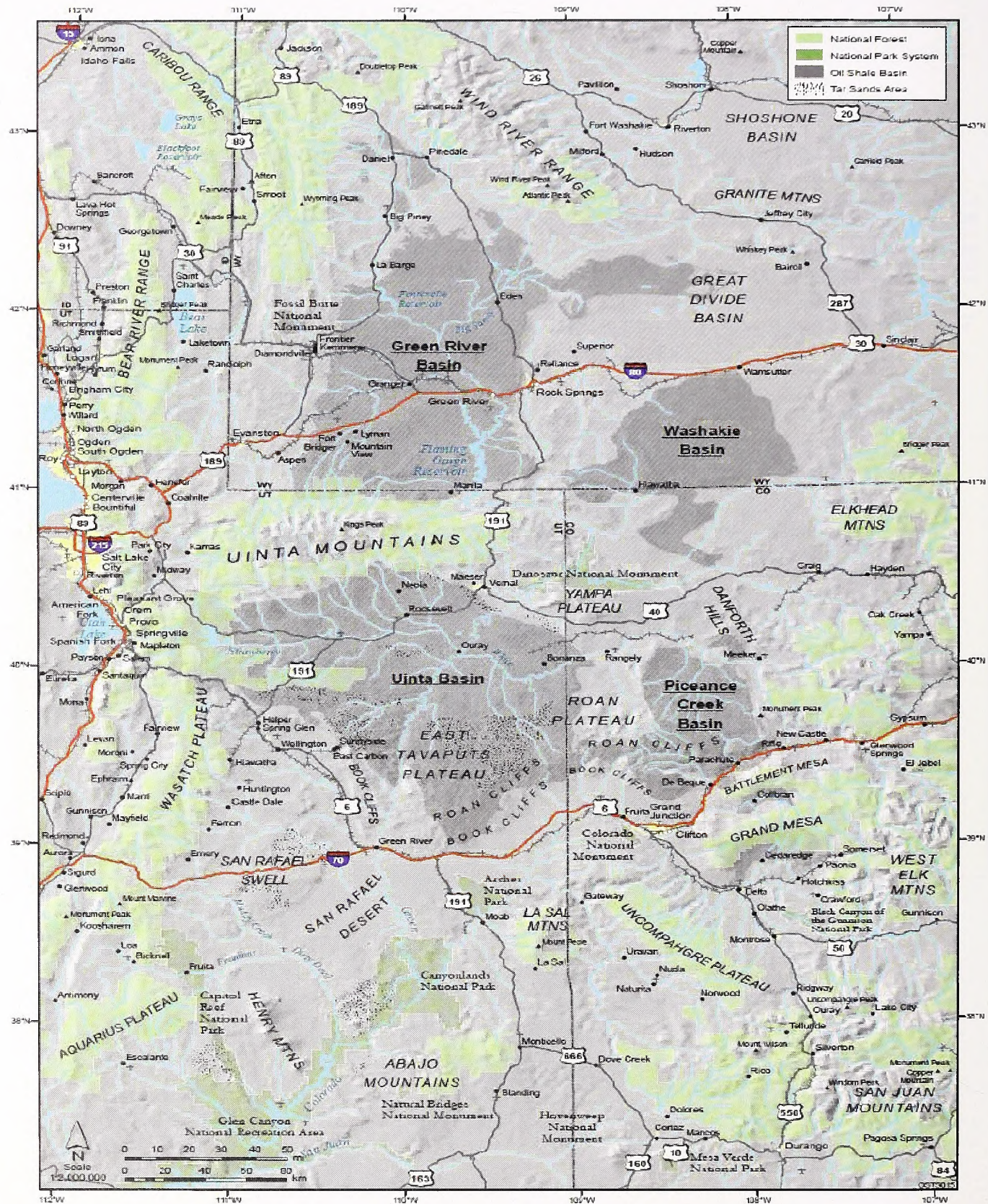
for Michael D. Nedd  
Assistant Director  
Minerals and Realty Management

Enclosure

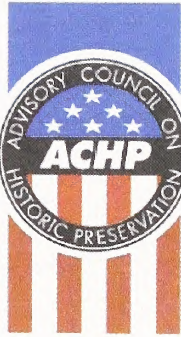
Oil Shale Deposits in the Three-State Area











*Preserving America's Heritage*

July 17, 2012

Mr. Michael D. Nedd  
Assistant Director  
Minerals and Realty Management  
Bureau of Land Management  
1849 C Street, NW  
Washington, DC 20240

**Ref: *New Decision based on Oil Shale and Tar Sands Resources Leasing Programmatic Environmental Impact Statement  
Colorado, Utah, and Wyoming***

Dear Mr. Nedd:

The Advisory Council on Historic Preservation (ACHP) received the Bureau of Land Management's (BLM) letter from March 30, 2012 regarding the agency's plans to make a new decision based on a previously completed Oil Shale and Tar Sands Resources Leasing Programmatic Environmental Impact Statement (PEIS). When the BLM contacted us in 2008 about the initial PEIS, we recommended in March 14, 2008 and August 29, 2008 letters that the BLM complete a Programmatic Agreement to take effects to historic properties into account. The BLM declined to prepare such a document.

In light of the recent decisions and reliance on the PEIS, we continue to believe that the best course of action would be to execute a Programmatic Agreement that would cover BLM's decisions, from the upcoming decision through the consideration of site-specific plans. However, we acknowledge that, for the reasons stated in your letter, the BLM has argued that the nature of its decision at this particular stage is not one that would need to be preceded by Section 106 compliance. Of particular importance is the acknowledged fact that even if the proposed land use plan amendments are approved, the BLM will still have unfettered discretion to approve or deny the eventual site-specific plans within the lands available to lease. Should that be the case, the decision at this land use plan amendment stage would not be an "approval" with the potential to affect historic properties. Nonetheless, designating these lands as open to oil shale and tar sands development and availability to lease does imply that they are both appropriate for this development and that leases will be given.

We understand that the BLM has conducted broad identification efforts to identify historic properties in the lands at issue and that this will inform the decision to possibly further limit the lands available for leasing. This is a positive and proactive step by the BLM and we look forward to working with you when Section 106 compliance is initiated for individual lease applications and site specific plans. Should you have any questions or wish to discuss this matter further, please contact Nancy J. Brown by phone at (202) 606-8582, or by e-mail at [nbrown@achp.gov](mailto:nbrown@achp.gov).

Sincerely,

Reid J. Nelson  
Director  
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • [achp@achp.gov](mailto:achp@achp.gov) • [www.achp.gov](http://www.achp.gov)



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**ATTACHMENT 4:**  
**INTERESTED PARTIES CORRESPONDENCE**



## (a) Multiple Interested Parties

United States Department of the Interior  
BUREAU OF LAND MANAGEMENTWashington, D.C. 20240  
<http://www.blm.gov>

Hilery Lindmier  
Alliance for Historic Wyoming  
P.O. BOX 51201  
Casper, WY 82605

## INTERESTED PARTY LETTER: Revised Oil Shale and Tar Sands Resources Leasing PEIS for Colorado, Utah, Wyoming

Dear Hilery Lindmier,

In 2008 you expressed an interest in cultural and/or tribal resources in your comments on a Programmatic Environmental Impact Statement (PEIS) analyzing the effects of a land allocation decision by the Bureau of Land Management (BLM), to make land available for potential development of oil shale and tar sands<sup>1</sup>. This 2008 decision<sup>2</sup> resulted in amendment of eight (8) BLM Resource Management Plans (RMPs) allocating approximately 2,000,000 acres for potential development of oil shale and approximately 431,224 acres for development of tar sands.

The BLM is now preparing another *PEIS and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. Due to your past interest, the BLM is inviting you to consult on its current project with specific reference to cultural and/or tribal resources and the BLM's responsibilities under Section 106 of the National Historic Preservation Act (NHPA).

The BLM has decided to take a fresh look at the land use plan allocation decisions made in 2008 to consider which lands should be open to future leasing of oil shale and tar sands resources. As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for the total number of acres allocated in the 2008 decision to continue to be available for potential development of oil shale and tar sands resources.

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<sup>1</sup> *Proposed Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, September 2008.

<sup>2</sup> *Approved Resource Management Plan Amendments/Record of Decision (ROD) for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement*. Bureau of Land Management, Department of the Interior, November 2008.



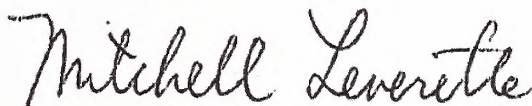
This PEIS will analyze amending pertinent BLM RMPs<sup>3</sup> to identify any areas that may be excluded from future oil shale and tar sands leasing in these three states. Specifically, the BLM will decide whether any changes should be made to the existing land use allocation decisions, and will consider amending the applicable resource management plans to specify whether any areas in Colorado, Utah, and Wyoming currently open for future leasing and development should not be made available for such leasing and development. The BLM does not expect to add areas to the current allocation and will notify you if such a change should occur. The area under consideration is identified in the attached maps.

Because of your previous interest in cultural and/or tribal resources the BLM is inviting your participation in this project on issues pertinent to our responsibilities under Section 106 of the NHPA. Should you wish to consult with us, please contact Sherri Thompson, BLM Project Manager, at the address below or via email at [sthompso@blm.gov](mailto:sthompso@blm.gov), or phone at 303-239-3758. Your time and consideration are greatly appreciated.

We have also developed a web site specific to this project where users can gain further information, sign up for web news and up-dates, as well as submit comments. The address is: <http://ostseis.anl.gov>.

We look forward to hearing from you.

Sincerely,



Mitchell Leverette  
Chief, Division of Solid Mineral

Enclosures (3)  
1-Colorado map  
2-Utah map  
3-Wyoming map

cc: Sherri Thompson  
BLM-Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215

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<sup>3</sup> The White River RMP, the Grand Junction RMP, the Glenwood Springs RMP, the Vernal RMP, the Price RMP, the Richfield RMP, the Monticello RMP, the Kemmerer RMP, the Rawlins RMP, and the Green River RMP.

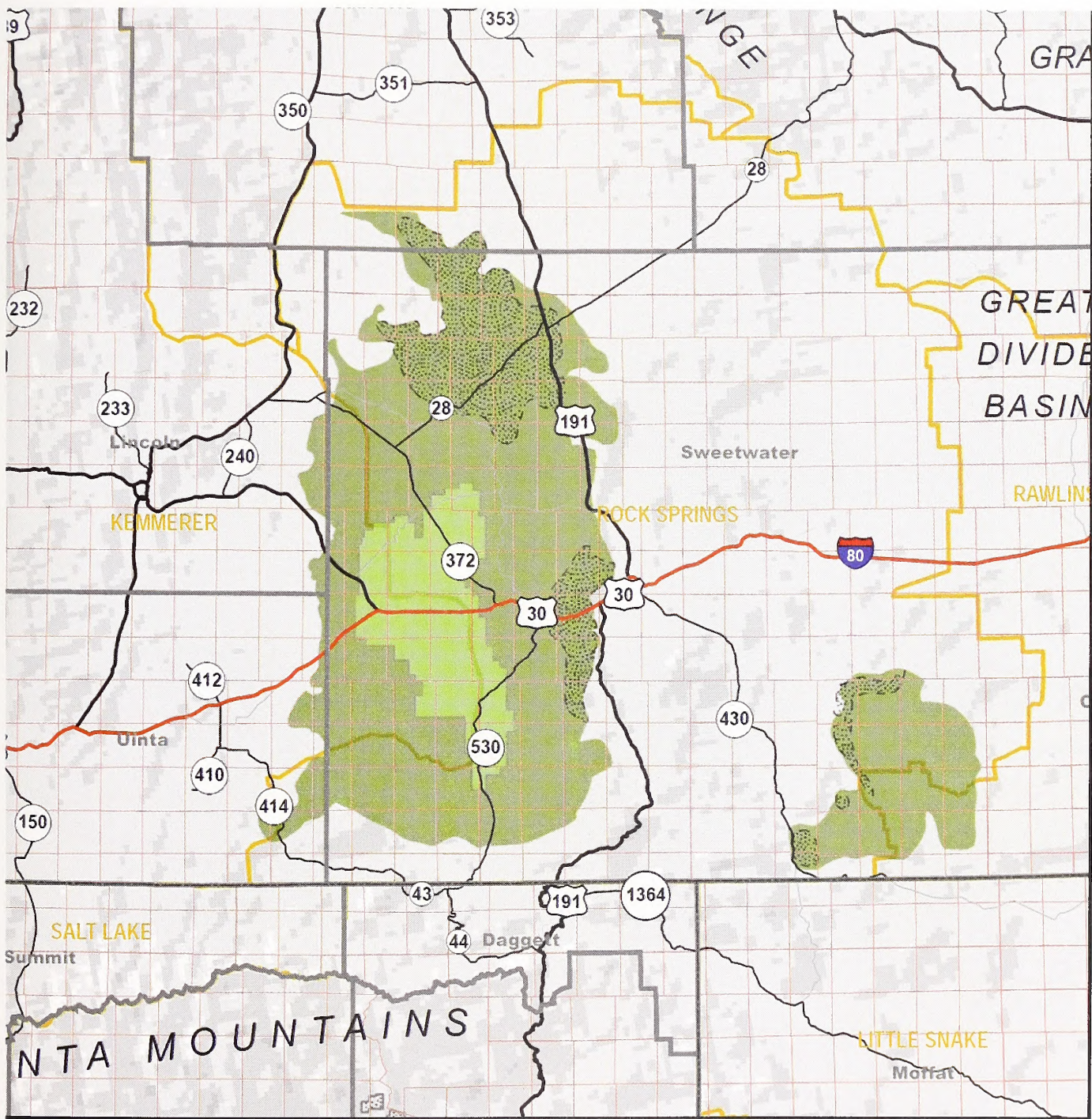


Dan Haas  
BLM-Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215

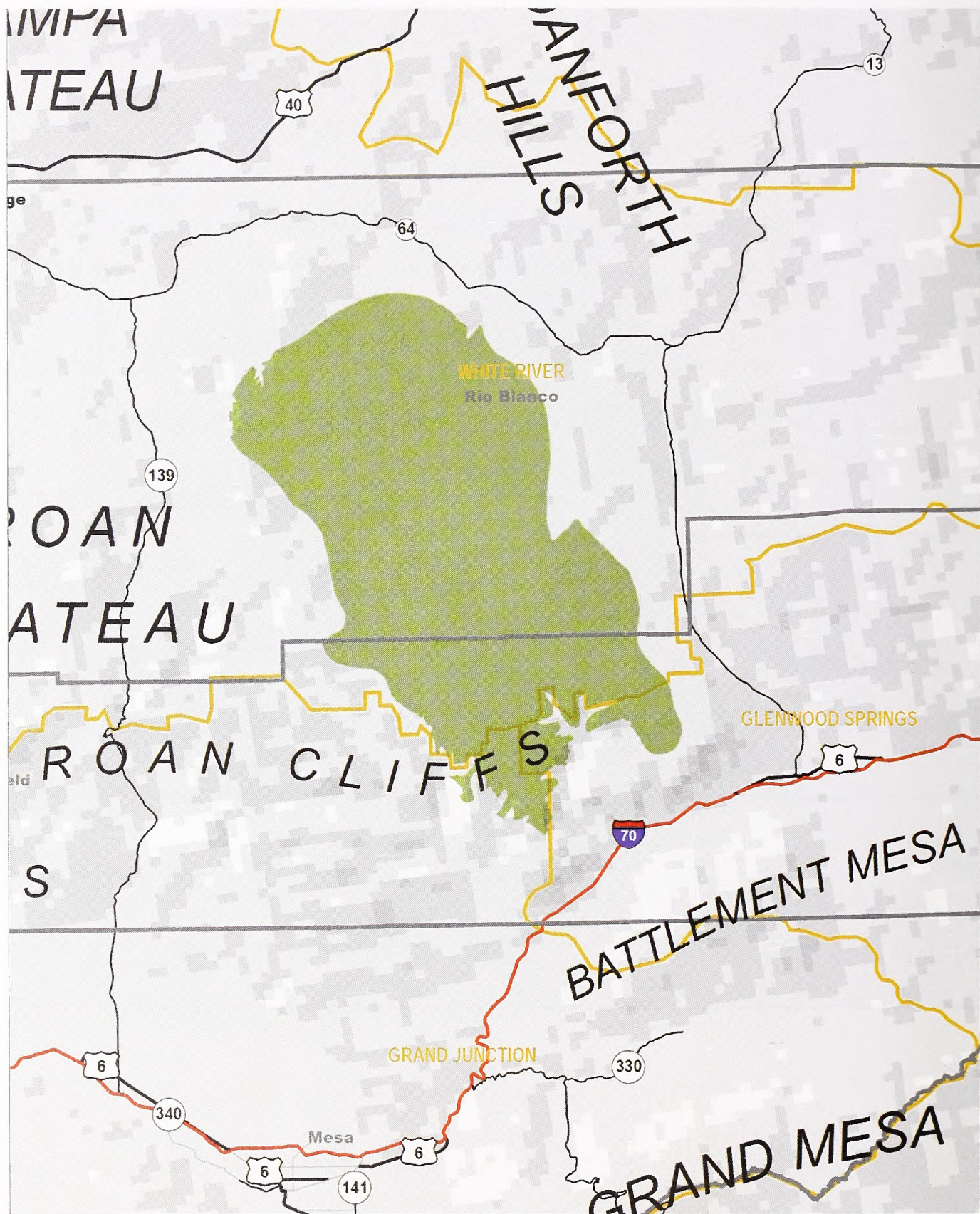
Byron Loosle  
BLM-Utah State Office  
440 West 200 South  
Salt Lake City, Utah 84145

Ranel Capron  
BLM-Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009

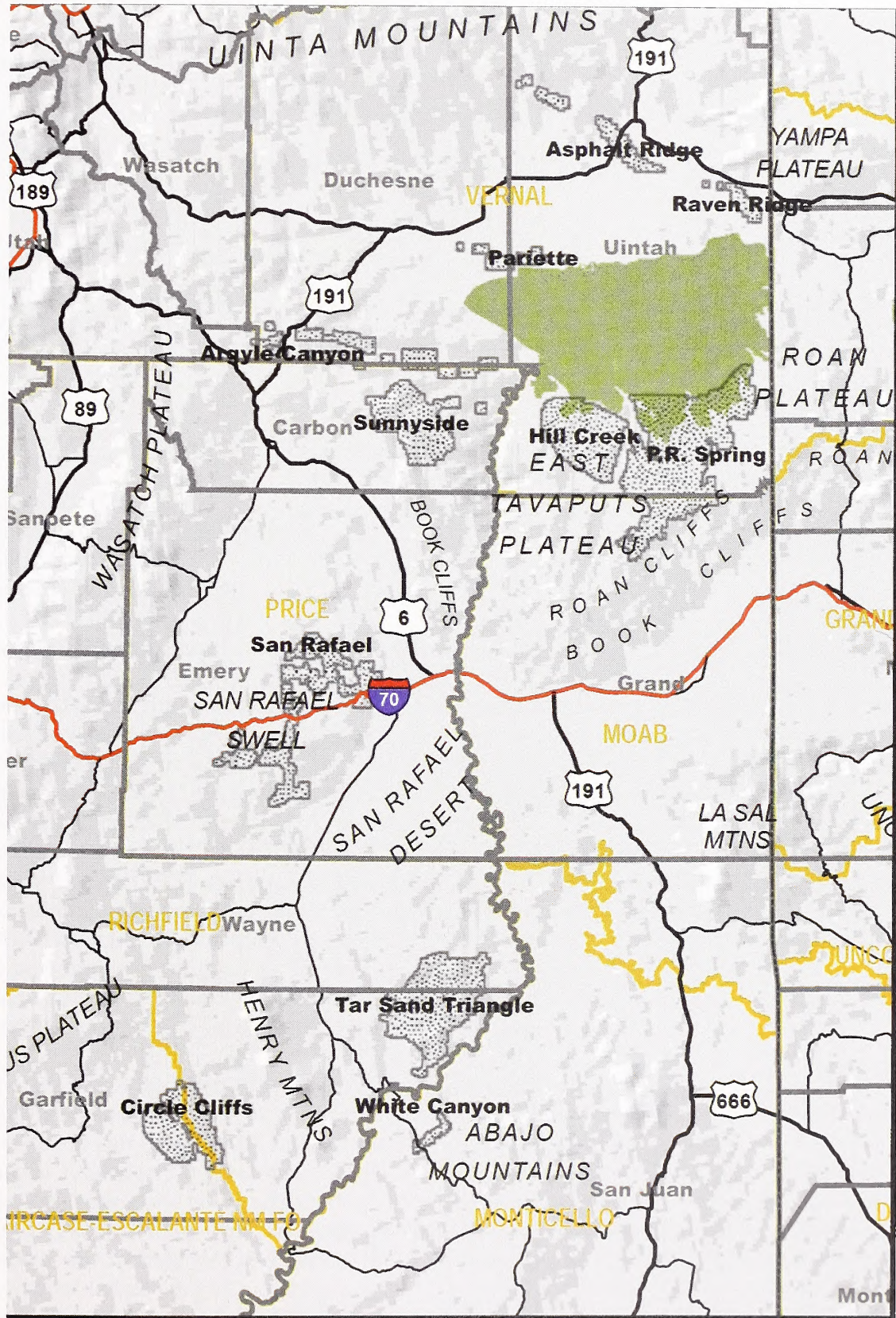














October 2011, Initial Notification Letter – Interested Parties Distribution List						
Name 1	Address 1	Address 2	City	St	Zip	Contact
Alliance for Historic Wyoming	PO BOX 51201		Casper	WY	82605	
Alliance for Historic Wyoming	712 S Second Street		Laramie	WY	82070	Lesley Wischmann
Biodiversity Conservation Alliance	PO BOX 1512		Laramie	WY	82073	Erik Molvar, Executive Director
Center for Biological Diversity	1095 Market Street, Suite 511		San Francisco	CA	94103	Melissa G Thraikill
Colorado Environmental Coalition	1536 Wynkoop Street #5C		Denver	CO	80202	Elise Jones
Colorado Plateau Archaeological Alliance	2529 S Jackson Avenue		Ogden	UT	84401	Jerry D Spangler
Defenders of Wildlife	1130 17th Street, NW		Washington	DC	20036	Rodger Schickelsen
National Trust for Historic Preservation	1785 Massachusetts Avenue NW		Washington	DC	20036-2117	Stephanie Meeks
National Trust for Historic Preservation	535 16th Street, Suite 750		Denver	CO	80202	Barbara Pahl, Director
National Wildlife Federation	2260 Baseline Road, Suite 100		Boulder	CO	80305	Kathleen C Zimmerman
Natural Resources Defense Council	40 West 20th Street		New York	NY	10011	Amy Mall
Nine Mile Canyon Coalition	PO BOX 402		Price	UT	84501	Pam Miller
NPS - National Historic Trails - Intermountain Region	100 Old Spanish Trail		Santa Fe	NM	87504	Aaron Mahr
NPS -National Historic Trails - Intermountain Region	324 S State Street, Suite 200		Salt Lake City	UT	84111	Lee Kreutzer
Old Spanish Trail Association	178 Glory View Drive		Grand Junction	CO	81503	Vicki Felmle
Old Spanish Trail Association	PO BOX 909		Las Vegas	NV	87701	Dennis Ditmarsen
Oregon-California Trails Association	PO BOX 1019		Independence	MO	64051-0519	John Mark Lambertson
Oregon-California Trails Association	112 W Second Street		Casper	WY	82601	Tom Rea, Vice President
Red Rock Forests	90 W Center Street		Moab	UT	84532	Terry Shephard
Sierra Club	2725 Black Canyon Road		Colorado Springs	CO	80904	Kirby B Hughes
Southern Utah Wilderness Alliance	425 E 100 S		Salt Lake City	UT	84111	David Garbett
The Nature Conservancy	4245 S Fairfax Drive, Suite 100		Arlington	VA	22203	Mark Tercek, President
The Nature Conservancy	PO BOX 1329		Moab	UT	84532	Joel Tuhy
The Wilderness Society	1615 M Street, NW		Washington	DC	20036	Chase Huntley
Utah Professional Archaeological Council	Department of Anthropology 800 SWKT		Provo	UT	84602	James R Allison, Assistant Professor
Utah Rock Art Research Association	PO BOX 511324		Salt Lake City	UT	84151-1324	Troy Scotter
Western Colorado Congress	124 N 6th Street	PO BOX 1931	Grand Junction	CO	81502	Heather Tischbain
Western Resource Advocates	22200 Baseline Road		Boulder	CO	80302	Mike Chiropoulos
Wilderness Workshop	PO BOX 1442		Carbondale	CO	81623	Peter Hart





## United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, Wyoming 82003-1828

In Reply Refer To:  
3900 (930)  
8100

JAN 20 2012

Leslie Wischmann  
Alliance for Historic Wyoming  
712 S. Second Street  
Laramie, WY 82070

Dear Ms. Wischmann:

Attached please find the *Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. The Bureau of Land Management (BLM) has prepared this Draft PEIS in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA). As a follow-up to our initial letter, the BLM invites you to review the Draft PEIS and provide any additional information or comments relating to historic and cultural resources. Pursuant to Section 106 of the National Historic Preservation Act (NHPA), the BLM also invites you to continue participating in the Section 106 process regarding the proposed undertaking, i.e., the potential amendment of ten BLM Resource Management Plans (RMPs) in Colorado, Utah, and Wyoming to allocate lands as "open" or "closed" to potential leasing for oil shale and tar sands development.

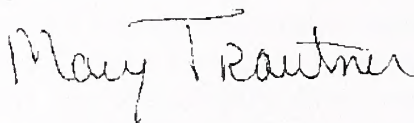
As described in the Draft PEIS, the BLM is examining proposed land use allocation decisions for potential availability of oil shale and tar sands leasing that will provide future management direction as part of the RMP, but will not authorize any on the ground activities. See Draft PEIS, Chapter 1, Section 1.1, Text box. The BLM recognizes that decisionmaking regarding the potential leasing and development of oil shale and tar sands resources would occur in three stages. The first stage would be accomplished through the development of the current PEIS process, which could lead to a Record of Decision (ROD) regarding amendments to land use allocations to open or close areas as available for potential leasing. The second stage would be the BLM's consideration of lease applications submitted by interested parties, and the third stage would be the BLM's consideration of site-specific plans of development for leased areas. See Draft PEIS, Chapter 1, Section 1.1, Text box. The second and third stages would require compliance with both NEPA, Section 106 of the NHPA, as well as other pertinent laws, regulations, and policies. See Draft PEIS, Chapter 3, Section 3.9.1.



A BLM representative will contact you to ensure that you have received this letter and the attached Draft PEIS, and to answer any questions you may have regarding historic properties and the potential effects the proposed land use plan amendments may have on such properties. We will also ask if you would like to meet to discuss any concerns regarding our responsibilities under Section 106 of the NHPA. You may also submit comments regarding historic properties to the BLM contact listed below, or as part of the NEPA comment process. To comment on this or other issues as part of the NEPA process, please see the Dear Reader letter at the beginning of Volume I of the document.

Thank you for your interest in the *Draft PEIS and Possible Land Use Plan Amendments for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming*. We appreciate your participation in the Section 106 process. For questions related to Section 106 of the NHPA, please contact Sherri Thompson, Project Manager, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7093, (303) 239-3758, [sthompso@blm.gov](mailto:sthompso@blm.gov), or visit the Web site at <http://osts.eis.anl.gov>.

Sincerely,



Donald A. Simpson  
State Director

Enclosure

January 2012, Draft PEIS - Distribution List Interested Parties					
Name	Contact	Address1	City	St	Zip
Alliance for Historic Wyoming	Lesley Wischmann and Hilery Lindmier	712 S Second Street	Laramie	WY	82070
Biodiversity Conservation Alliance	Erik Molvar, Executive Director	P.O. Box 1512	Laramie	WY	82073
Colorado Plateau Archaeological Alliance	Jerry D Spangler	2529 S Jackson Avenue	Ogden	UT	84401
Dominguez Archaeological Research Group Inc.	Carl Conner	P.O. Box 3543	Grand Junction	CO	81502
NPS -National Historic Trails - Intermountain Region, Salt Lake City Field Office	Lee Kreutzer	324 S State Street, Suite 200	Salt Lake City	UT	84111
Old Spanish Trail Association, Grand Junction Local Chapter	Vicki Felmile	178 Glory View Drive	Grand Junction	CO	81503



**(b) Alliance for Historic Wyoming**

**From:** [hilerywwwy@gmail.com](mailto:hilerywwwy@gmail.com) [<mailto:hilerywwwy@gmail.com>] **On Behalf Of** Hilery Lindmier  
**Sent:** Wednesday, October 19, 2011 8:56 AM  
**To:** Thompson, Sherri J  
**Cc:** Lesley Wischmann; Barbara Dobos  
**Subject:** Question - Revised oil Shale and Tar Sands Resources Leasing PEIS for CO, UT, and WY

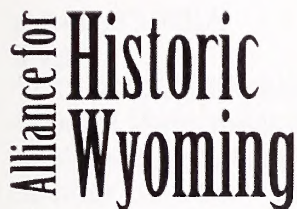
Dear Ms. Thompson,

The Alliance for Historic Wyoming recently received notification as an interested party about the Revised Oil Shale and Tar Sands Resources Leasing PEIS for CO, UT, and WY. I am corresponding with AHW's board of directors about if and how much we would like to get involved in the process. We also received the maps illustrating the 2008 Approved Land Use Plan of Oil Shale for the 3 different above mentioned states, but there is one problem - the map labeled Wyoming is actually a copy of the Utah map! When you have a chance, could you please resend us the actual Wyoming map (digital or hard copy).

Thank you!  
Best,  
Hilery

--

M. Hilery Lindmier, *Executive Director*  
**Alliance for Historic Wyoming**  
PO Box 51201  
Casper, WY 82605  
307.333.3508  
[ExecDirector@historicwyoming.org](mailto:ExecDirector@historicwyoming.org)  
[www.historicwyoming.org](http://www.historicwyoming.org)



protecting Wyoming's historic places

Barbara Dobos (Casper, WY) • Lesley Wischmann (Laramie, WY) • Mary Humstone (Fort Collins, CO) • Tom Fea (Casper, WY)  
Misty Stoll (Laramie, WY) • Trish Ullery-Whitaker (Kaycee, WY) • Edre Maier (Sheridan, WY) • Kurt Dubbe (Jackson, WY)  
Russ Kaldenberg (Cheyenne, WY)

PO Box 51201 | Casper, WY 82605 | 307.333.3508 | [ExecDirector@historicwyoming.org](mailto:ExecDirector@historicwyoming.org) | [www.historicwyoming.org](http://www.historicwyoming.org)

Lesley Wischmann  
Alliance for Historic Wyoming  
712 South Second Street  
Laramie, WY 82070  
307.742.5449  
[lesleywisch@wyoming.com](mailto:lesleywisch@wyoming.com)  
24 Apr 2012

Mr. Michael Nedd, BLM Assistant Director  
Minerals, Realty and Resource Protection  
1849 "C" Street NW  
Washington, DC 20240

Dear Mr Nedd:

Thank you for this opportunity to comment on the Draft Programmatic Environmental Impact Statement for Oil Shale and Tar Sands Development in Wyoming. Please consider these the formal comments of the Alliance for Historic Wyoming (AHW), a statewide nonprofit organization dedicated to preserving our historic and cultural resources. We work with citizens around the state and across the country who are concerned about ensuring Wyoming's irreplaceable historic resources exist for future generations.

As this project goes forward, we ask that AHW be considered an interested party at every stage of this process for all consultations under Section 106 of the National Historic Preservation Act (NHPA) as amended, and implementing regulations 36 CFR 800.2(c)(5) and 800.3(f)(3). You may use the above listed address, phone number and email address to contact us as part of the Section 106 consultations. As you know, NHPA's Section 106 process recognizes that "the views of the public are essential to informed Federal decision making" and agencies are required to "seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, [and] the likely interest of the public in the effects on historic properties." 36 CFR § 800.2(d)(1) Likewise, the Historic Sites Act of 1935 states that: "It is a national policy to preserve for public use historic sites, buildings, and objects of national significance for their inspiration and benefit of the people of the United States." In the case of this project, we expect that interest could be especially high because of the nature of the potentially affected resources - the National Historic Trails, in particular - as well as the dramatically different nature of this potential undertaking from any that has previously been done in Wyoming. Therefore, we encourage you to reach out to the various nonprofit organizations dedicated to

P.O. Box 51201, Casper, WY 82605 E-mail: [ExecutiveDirector@HistoricWyoming.org](mailto:ExecutiveDirector@HistoricWyoming.org)

The Alliance for Historic Wyoming is a 501(c)(3) nonprofit organization

Executive Director: Hilery Lindmier Board of Directors: Chamois Anderson ⊕ Barbara Dobos ⊕ Kurt Dubbe ⊕ Mary Humstone ⊕ Edre Maier ⊕ Misty Stoll ⊕ Trish Ullery-Whitaker ⊕ Lesley Wischmann



working on historic and prehistoric resources in this area, including the county historical societies, the certified local government organizations, TRACKS Across Wyoming, the Lincoln Highway Association and the local museums and tourism offices. Each of these groups will have valuable input to add to the Section 106 process.

We also want to encourage you to ensure that extensive and effective outreach be made to the affected tribes as early as possible in this process so that they might have the opportunity to do extensive on-the-ground surveys to identify landscape-wide cultural sites of importance to them. As you may be aware, it is often the case that the prehistoric and cultural features identified by SHPOs do not come close to being as inclusive as the sites identified by THPOs and tribal elders. Tribes often have not had the opportunity to do extensive ground surveys for decades or longer. Only through this kind of examination can they adequately contribute to the process of protecting their sacred sites in accordance with Executive Order 13007. We would also remind you that EO 13007 defines a "sacred site" as "any specific, discrete, narrowly delineated location" that is "identified by an Indian tribe, or **Indian individual determined to be an appropriately authoritative representative of an Indian religion....**" (emphasis added) This secondary requirement of seeking identification by authoritative Indian **individuals** places a heavy responsibility on federal agencies to cast a wide net among the affected tribes to ensure that all potential sacred sites are identified. While we understand and appreciate that this level of consultation can be time-consuming and complicated, we believe that the need to protect these irreplaceable resources makes this process more than worthwhile.

As a representative of the Alliance for Historic Wyoming, I did have the opportunity to speak with Sherri Thompson about this project and appreciated her sensitivity towards our concerns and her willingness to reach out and offer us additional consultation opportunities. It is clear that the BLM has taken a very cautious approach to the potential for oil shale/tar sands development and we very much appreciate this go slow attitude since none of us have ever before dealt with an oil shale project and the technology itself remains experimental, with no proven track record of success.

Our concerns, in general, are concerns that I am sure you will hear from many others. In particular, the "dirty" nature of oil shale gives us great pause about this project. In addition, we are deeply concerned about how development of oil shale would affect the water resources in Wyoming, which I am sure you know is a high desert. Thanks to that high desert climate, we are blessed with the best remaining remnants of the historic emigrant trails - the Oregon, California, Mormon and Pony Express National Historic Trails. But the lack of water in our state is always a concern when development is proposed and with the changing climate patterns and our recent history of drought, it is doubtful that we can afford to use the quantities of water that would be necessary to make oil shale a viable commodity without seriously diminishing the water available for our communities.

Our specific cultural resource concerns center on the degradation of the historic trails and other cultural sites, including rock art and archaeology sites, which are being heavily impacted by the increasing industrialization of the I-80 corridor through southern WY. While

P.O. Box 51201, Casper, WY 82605 E-mail: Executive Director@HistoricWyoming.org

The Alliance for Historic Wyoming is a 501(c)(3) nonprofit organization

Executive Director: Hilery Lindmier Board of Directors: Chamois Anderson ⊕ Barbara Dobos ⊕ Kurt Dubbe ⊕ Mary Humstone ⊕ Edre Maier ⊕ Misty Stoll ⊕ Trish Ullery-Whitaker ⊕ Lesley Wischmann



many people look at this area and see only a heavily impacted transportation corridor, the Alliance for Historic Wyoming recognizes that this transportation corridor in fact tells the whole story of America's development into a nation "from sea to shining sea." It is along this corridor that one can experience the original historic emigrant trails, the shift in usage of the trails to a freighting operation (the Overland Trail), the connecting of the continent through the transcontinental railroad, the communications revolution that began with the Pony Express and continued with the telegraph lines, the first national roadway (the Lincoln Highway), the Eisenhower interstate road system and, more recently, the development of industrial wind energy. All of these advancements have helped to bind our nation together and southern Wyoming offers unique opportunities for interpretation and appreciation of these resources.

When you look at these areas and the historic and cultural resources in them, we strongly encourage you to take this broader view. In particular, we believe that the BLM has done a generally poor job of evaluating Wyoming's landscapes in terms of their potential for listing on the National Register of Historic Places as Rural Historic Landscapes or Traditional Cultural Properties. Very little consideration has also been given as to whether any of these areas might qualify as National Heritage Areas. Wyoming's most iconic cultural feature is its wide-open spaces. Unfortunately, however, these vistas and their importance to our communities are rarely considered by the BLM when looking at the impacts of these large-scale projects. In our experience, the Section 106 process as outlined by the National Historic Preservation Act is often incapable of addressing these concerns. The Section 106 process requires that the participants define an area of potential effect (APE) and then address the potential adverse effects within those boundaries. But when you are talking about open vistas, it is impossible to draw boundaries around the space.

Additionally, we find the Section 106 approach increasingly inadequate when it comes to dealing with the National Historic Trails. The trails, by their very nature, are a single, contiguous resource that extends for hundreds of miles from their point of origin to their termination. When we are forced to confine our analyses to the impacts that occur within an APE, we are artificially segmenting these trails and doing irreparable harm to them in the process. In our experience, the Section 106 process is simply incapable of adequately addressing these cumulative effects. As a result of this recognition, we are now requesting that a mechanism be established to provide off-site compensatory mitigation for cumulative effects through the NEPA process. This not only provides an opportunity to deal with these difficult to address cumulative effects but has the added bonus of making it possible to provide grants to organizations that, for any number of reasons, might not be able to take part in the Section 106 process, but which may well have new and innovative ideas about how to address the adverse effects. Should this project go forward, we hope that the NEPA documents will address this issue.

Our concerns about this project are not just limited to the environmental and cultural issues already addressed. We also recognize that cultural and historic resources are closely tied to recreational values and the socio-economic vitality of our small cities and towns.

Wyomingites, by nature, are closely tied to their lands. We rely on our public lands for

P.O. Box 51201, Casper, WY 82605 E-mail: [ExecutiveDirector@HistoricWyoming.org](mailto:ExecutiveDirector@HistoricWyoming.org)

The Alliance for Historic Wyoming is a 501(c)(3) nonprofit organization

Executive Director: Hilery Lindmier Board of Directors: Chamois Anderson ⊕ Barbara Dobos ⊕ Kurt Dubbe ⊕ Mary Humstone ⊕ Edre Maier ⊕ Misty Stoll ⊕ Trish Ullery-Whitaker ⊕ Lesley Wischmann



recreational opportunities. This extends very directly to the huge impact that tourism has on our state. As you may or may not know, tourism is Wyoming's second largest industry, right behind energy development. And the fastest growing sector of the tourism industry is heritage tourism. Wyoming is blessed with a robust heritage tourism sector. People come from all over the world to experience "the West" in Wyoming. They are looking not only for our open vistas but also our historic ranches, our ghost towns, our unique little museums, our abandoned railroad spurs, our isolated cemeteries, our historic trails, our rock art and tipi rings, our forts and battlefields, and our natural landmarks. If they arrive in Wyoming and do not feel transported to another time and place, if all they see around them are the signs of industrialization that they can find in any other state, they will quickly move on. To lose this source of income would be devastating to our small communities, especially. As a state, we have experienced and absorbed and survived untold cycles of the boom and bust energy economy. What brings us through is our pristine landscapes and cultural assets which bring in the tourists with their tourism dollars. If energy booms are allowed to wipe out those assets, it is highly uncertain how we would weather the bust.

Google some of our smaller towns along the I-80 corridor and you will see why we are concerned about giving the wandering heritage tourist the impression that there is little to see or do that cannot be found in a more densely populated and developed location. Take Superior, WY, for example. The website they maintain <superiorwyoming.net> explains their allure this way:

*We invite you to enjoy a modern day voyage into yesteryear to a town forgotten by time. Superior remains a diamond in the rough for those seeking real adventure in authentic old west sightseeing. In its heyday, Superior was a bustling town of over 3,000, lured by underground coal mines. Today, only 336 hearty souls keep this isolated "Ghost Town" alive.*

This is precisely the kind of description that calls the heritage tourist away from the interstate and invites them to explore. But if they are already discouraged by what they have seen while driving, they are likely to pass Superior by. Nearby Reliance, WY, depends on its historic tippie to create the same kind of draw. Built in 1936, the tippie was touted as being "the most modern all-steel tippie in the Union Pacific Coal Company's extensive coal holdings" with "a capacity of 500 tons of coal per hour." Without the heritage tourists who stop to learn about a tippie, Reliance would certainly suffer. I would encourage you to visit the TRACKS Across Wyoming <tracksacrosswyoming.com> website and see all the fascinating little pieces of history that continue to thrive because heritage tourism is alive and well along the I-80 corridor. No NEPA analysis would be complete or adequate for energy development in this area if it doesn't thoroughly examine the impacts such a project, especially a "dirty energy" project, would have on recreational tourism and the resulting potential for socio-economic loss.

As I am sure you know, Congress declared in NHPA that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; [and] the

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preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans." 16 U.S.C. 470(b)(2) and (b)(4) Moreover, NHPA states that: "It shall be the policy of the Federal Government...to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations; [and] encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment." 16 U.S.C. 470-1 (1) and (5) These findings place a high burden on our country's land management agencies to ensure that all possible steps be taken to ensure the protection of our historic and cultural resources for future generations. AHW believes that no NEPA analysis can be complete or adequate if it doesn't thoroughly examine the impacts that the proposed project, especially if it is a "dirty energy" project, would have on recreational opportunities, including the ability and desire to wander and discover the nation's historic roots, heritage tourism and the potential socio-economic loss if such opportunities are sacrificed.

Thank you for your consideration of these comments. Should you have any questions about our concerns, please feel free to contact us. AHW looks forward to working with you as this project proceeds.

Sincerely,

Lesley Wischmann  
Founding Board Member  
Alliance for Historic Wyoming



**(c) Biodiversity Conservation Alliance**

**From:** Thompson, Sherri J [mailto:sthompso@blm.gov]

**Sent:** Thursday, October 06, 2011 11:27 AM

**To:** Winthrop, Kate R; Verhaaren, Bruce T.

**Cc:** Picel, Kurt C.; Capron, Patricia R; Carls, Elizabeth; McNeer, Richard; Leverette, Mitchell; Martin, Benjamin F

**Subject:** Interested party

Kate, Just got a call a few minutes ago from Erik Molvar, with the Biodiversity Conservation Alliance, one of the plaintiffs in the lawsuit, saying he would be interested in consulting with us.

**(d) Colorado Plateau Archaeological Alliance**

**From:** Thompson, Sherri J [mailto:sthompso@blm.gov]

**Sent:** Thursday, November 03, 2011 11:59 AM

**To:** Winthrop, Kate R; Verhaaren, Bruce T.; Haas, Daniel R; Capron, Patricia R; Loosle, Byron N; Picel, Kurt C.

**Subject:** FW: Oil Shale consulting party

**From:** jerry\_cpaa@comcast.net [mailto:jerry\_cpaa@comcast.net]

**Sent:** Thursday, November 03, 2011 10:50 AM

**To:** Thompson, Sherri J

**Subject:** Oil Shale consulting party

Dear Sherri:

Per the letter from Mitchell Leverette (no date), I accept the invitation to be a consulting party regarding the Revised Oil Shale and Tar Sands PEIS for Utah, Colorado and Wyoming. I look forward to the process and working with the BLM to reach collaborative solutions.

Best Regards,

Jerry D. Spangler, MA RPA  
Executive Director  
Colorado Plateau Archaeological Alliance  
2529 Jackson Ave.  
Ogden, Utah 84401  
801-392-2646 (office)  
801-388-3387 (cell)



**(e) NPS-National Historic Trails-Intermountain Region, Salt Lake City Office**

**From:** Thompson, Sherri J [mailto:sthompso@blm.gov]

**Sent:** Wednesday, November 02, 2011 3:01 PM

**To:** Picel, Kurt C.; Verhaaren, Bruce T.; Winthrop, Kate R; Loosle, Byron N; Capron, Patricia R; Haas, Daniel R

**Subject:** Interested party

Got a call from Lee Critzer with the National Park Service in Salt Lake City-she apparently works with the National Trails group. They have received our letter asking if they'd like to be an interested party and she was calling to accept our invitation.

**(f) Old Spanish Trails Association-Grand Junction Local Chapter**

**From:** Thompson, Sherri J [mailto:sthompso@blm.gov]

**Sent:** Tuesday, October 11, 2011 11:43 AM

**To:** Winthrop, Kate R; Haas, Daniel R; Verhaaren, Bruce T.; Picel, Kurt C.

**Subject:** Interested party letter acceptance

Just spoke with Vicki Felmlle, with the Old Spanish Trail Association. She would like to be an interested party. Her number is (withheld).



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**APPENDIX M:**

**COOPERATING AGENCY AND  
U.S. ENVIRONMENTAL PROTECTION AGENCY LETTERS**



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## **APPENDIX M:**

### **COOPERATING AGENCY AND U.S. ENVIRONMENTAL PROTECTION AGENCY LETTERS**

#### **M.1 COOPERATING AGENCY LETTERS**

Several of the cooperating agencies, notably the States of Utah and Wyoming, and Uintah County, Utah, submitted comments on the Draft 2012 Oil Shale and Tar Sands (OSTS) Programmatic Environmental Impact Statement (PEIS), wherein they asserted that the Preferred Alternative presented in the 2012 Draft OSTs PEIS is inconsistent with their officially approved or adopted resource-related plans, policies, or programs.

Specifically, the State of Wyoming has stated that the Preferred Alternative in the Draft Bureau of Land Management (BLM) Plan is inconsistent with the Governor's Executive Order 2011-5, which does not preclude mineral development in core population areas for sage-grouse; rather, it establishes conditions designed to maintain and enhance greater sage-grouse habitat. The BLM has modified the Preferred Alternative's approach from the Draft PEIS in the Final PEIS/Proposed Plan to maintain consistency with Wyoming's Greater Sage-grouse Core Area Protection Strategy. This is also more consistent with how the BLM is managing sage-grouse habitat for other resources in Wyoming.

The State of Wyoming has also indicated that the 2012 Draft OSTs PEIS is inconsistent with the Wyoming Environmental Quality Council's April 10, 2008, Very Rare and Uncommon Designation for the Adobe Town Area. The Council's designation allows for in situ or underground mining to take place in this area, and only closes the area to surface mining for oil shale resources, while the Preferred Alternative in the Draft PEIS excludes the entire area from leasing and development. The BLM has determined that because we are in the embryonic stages of achieving economic oil shale production in the United States on public lands, at this time, it is important to continue to manage the Adobe Town area conservatively with regard to oil shale leasing and development, and thus the exclusions set out for the Adobe Town area in the Draft PEIS will continue under the Final PEIS/Proposed Plan Amendment.

For its part, Uintah County has adopted into its General Plan, language that states, "Further, additional lands in Uintah County should be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15 gallons of oil per ton of ore." To the extent that the County asserts this language is inconsistent with the PEIS, it is important to note that Section 369 of the 2005 Energy Policy Act directed the Secretary of the Interior to complete a PEIS for a commercial leasing program for oil shale and tar sands resources on public lands, with an emphasis on the "most geologically prospective areas" in Colorado, Utah, and Wyoming. In preparing that PEIS in 2008, the BLM determined that the most geologically prospective areas should be identified on the basis of the grade and thickness of the deposits. The Secretary, through the BLM, determined the meaning of this phrase in 2008, and has carried it forward into this 2012 planning initiative, which is consistent with the Energy Policy Act's focus on appropriate development of these energy resources, for the reasons explained in Section 1.2 of the Draft 2012 PEIS. The standards developed by the U.S. Geological Survey (USGS)



Conservation Division, and subsequently adopted by the BLM, use 15 gal/ton and 15 ft thick as the prospectively valuable classification standard for oil shale resources. When the USGS was in charge of leasing oil shale resources in the 1970s and early 1980s, the USGS further defined oil shale leasing area criteria on a regional basis as 25 gal/ton and 25 feet thick. For both planning initiatives, the 2008 PEIS, and this 2012 PEIS, the most geologically prospective resources in Colorado and Utah are defined as those deposits that yield 25 gal/ton or more and are 25 ft thick or greater. In Wyoming, where the oil shale resource is not of as high a quality as it is in Colorado and Utah, the most geologically prospective resources are defined as those deposits that yield 15 gal/ton or more and are 15 ft thick or greater. The intent of using these definitions for planning purposes is to establish an area inside of which applications for leases can be accepted. Industry can make its own determinations on what target it may want to pursue within that area. An alternative that would apply the Wyoming criteria to Colorado and Utah was considered but eliminated from detailed analysis in the PEIS, as discussed in Section 2.5.2. In that discussion, it is reasoned that it would not make economic sense to open larger areas in Colorado and Utah to potential oil shale leasing where the resource is of low grade and unlikely to be developed at this time, because interest in future leasing would be directed at higher grade deposits. It is further noted that, in the future, additional planning and National Environmental Policy Act of 1969 (NEPA) analysis could be conducted to open areas with lower grade deposits if economically warranted.

The State of Utah stated that the Draft OSTs PEIS is inconsistent with state law, specifically, Utah Code Section 63J-8-103(4), which provides that, “the public lands should not be segregated into separate geographical areas for management that resembles the management of wilderness, wilderness areas, wildlands, and the like.”

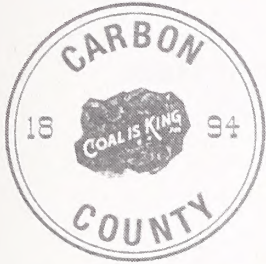
The State of Utah and Duchesne and Uintah Counties in Utah, expressed concerns that the BLM Proposed Plan is not consistent with the Energy Zones established by the State of Utah and Uintah, Duchesne, and Daggett Counties in the 2012 Uintah Basin Energy Zone legislation (Utah Code Sections 63J-8-102 and 105.5) containing oil shale and tar sands resources that provides for energy development as the priority use within this Zone.

Uintah County, Utah, also expressed concerns that the PEIS was inconsistent with the County Plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County.

To the extent the Final PEIS/Proposed Plan Amendment is inconsistent with state and county plans, policies, or programs, the BLM nevertheless believes that because of the nascent character of the oil shale and tar sands technologies, a measured approach should be taken to oil shale and tar sands resources leasing and development.

In addition, several of the cooperating agencies passed County Resolutions objecting to this planning process and its proposed outcome. To the extent that the Final PEIS/Proposed Plan Amendment is inconsistent with the County Resolutions, the BLM believes it is necessary to maintain a focus on research, development and demonstration projects. This will allow the BLM to obtain more information about technological and environmental consequences before committing to broad-scale development. The cooperating agency comments follow, and the responses can be found in the Comment Response Document in Volume 5 of this Final OSTs PEIS.





"Strength Through  
Diversity"

May 1, 2012

Oil Shale and Tar Sands Resources Draft Programmatic EIS  
Argonne National Laboratory  
9700 South Cass Avenue—EVS/240  
Argonne, IL 60439.  
Sent Via Email Transmission:  
<http://ostseis.anl.gov>

**Michael Milovich**  
Commissioner  
(435) 636-3272

Re: *Carbon County, Utah's Comments on the Draft  
Programmatic Environmental Impact Statement (PEIS) and  
Possible Land Use Amendments for Allocation of Oil Shale  
and Tar Sands Resources on Lands Administered by the  
BLM in Colorado, Utah and Wyoming.*

**John Jones**  
Commissioner  
(435) 636-3271

To Whom It May Concern,

The Board of Commissioners of Carbon County, Utah appreciates the opportunity to work with the Bureau of Land Management (BLM) as a Cooperating Agency in the preparation of the Draft PEIS for the Allocation of Oil Shale and Tar Sands Resources on Lands in Colorado, Utah, and Wyoming.

**Jae Potter**  
Commissioner  
(435) 636-3273

Carbon County expects that our comments will be used for creating a plan to support and further the multiple use mandates of the BLM and the utilization of our natural resources in the best interest of the American public. We expect these comments to be included as a part of the administrative record for the action and given due consideration. We also strongly support the comments rendered by the State of Utah and those from our adjoining counties (Duchesne and Uintah counties) who are also involved in this endeavor.

As you know Carbon County worked with BLM along with State agencies and counties from Utah, Colorado and Wyoming as well as various other agencies of the Federal Government hoping to help development a reasonable draft to management for exploration and extraction of Oil Shale and Tar Sands in an region containing the largest volume of oil in the world. At the end of a very rapid and whimsical experience that lasted almost four months BLM felt they could substitute this effort for the existing Oil Shale and Tar Sands program that took the previous administration three years of cooperative agency review between public comments to finalize. At the end of reviews of sometimes as much as 1000 or more pages of information with a 2-week deadline the Cooperators were asked to consider an alternative they could support as the, "Agency Preferred

**Carbon County** 120 East Main Street • Price, Utah 84501 • (435) 636-3200 • Fax (435) 636-3210



## OS&amp;TS PEIS COMMENTS

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Alternative.” The Cooperators not directly under the control of the Federal Administration were mostly unanimous in their position to make the No Action Alternative, (The Alternative that would leave the existing OS&TS program in tact) as their agency preferred alternative.

Some time after that and before this PEIS was released for public comment decisions were made at the highest level of the Department of Interior to add two sub-alternatives to the four alternatives for oil shale and made the, Agency Preferred Alternative. Their reasoning for ignoring our recommendation after asked and replacing it with an option that we as cooperators were not asked to consider or support was stated as, thus far, technological and economic conditions have not combined to support a sustained commercial oil shale industry in the United States, and tar sands is not at present a proven commercially-viable energy source, the DOI/BLM is adding these oil shale alternatives in support of the BLM and the Department’s emphasis on a robust RD&D program.

Although many of the cooperators informed BLM of many countries using technology to extract Oil Shale and Tar Sands and in one case Uintah County, Utah provided a slide presentation of the Commissioners visiting a site in Estonia that has been economically producing oil from Tar Sands for many years, the BLM chose to ignore the facts and go with the spin.

The new Preferred Alternative; Alternative 2 known as the Conservation Focus Alternative is analyzes removing from possible oil shale and tar sands leasing the following kinds of areas:

1. All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics (preliminary information may be found in chapters 2 and 3 of the 2008 Programmatic EIS;
2. The whole of the Adobe Town “Very Rare or Uncommon” area, as designated by the Wyoming Environment Quality Council on April 10, 2008;
3. Core or priority sage grouse habitat, as defined by such guidance as the BLM or the Department of the Interior may issue;
4. All areas of critical environmental concern (ACEC) located within the areas analyzed in the September 2008 Oil Shale and Tar Sands Resources Leasing Final EIS; and
5. All areas identified as excluded from commercial oil shale and tar sands leasing in Alternative C of the September 2008 OSTTS Programmatic EIS.

Also, under this Alternative lands open for future leasing consideration would be the same as those in Alternative 2(a), but only for oil shale Research, Development, and Demonstration (RD&D) leases. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 C.F.R. subpart 3926 for conversion to a commercial lease. The preference right acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease.



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The Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005, which was approved and passed by Congress. The oil shale and tar sands program from which the 2008 OSTs PEIS and related regulations came was a reasonable response to the fact that the recoverable oil equivalent from oil shale and tar sands resources in northeastern Utah, northwestern Colorado and southwestern Wyoming exceeds 4 trillion barrels per the latest USGS scientific estimate would be available to the American public for extraction and use.

The preferred alternative in the 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science. Such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates the regulatory standards from the Task Force requirements of certainty for industry and investors; and would probably also violate the Data Quality Act of 2000.

Regarding the preliminary purpose and need statement in the notice of intent, which states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics.

On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS. The notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply.)

This language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310. Carbon County and others have reminded BLM that any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed



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further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010. The spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution and the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution. BLM in no way can distance this PEIS from Order 3310. Truly, no excuse rendered will avail. All one has to do is look at the provisions of the PEIS in light of the February 2011 court settlement agreement, to realize that the center-piece of this effort is to repeal oil shale and tar sands development on lands with so-called wilderness characteristics, which have just about everything to do with the now defunct Order 3310 Wildlands Policy. It is brazen disregard of the CR, for the BLM to now pretend that this PEIS – hostile as it is to oil shale and tar sands development on “wilderness characteristics” lands, suddenly has nothing to do with the now defunct and Congressionally barred Wildlands Order. BLM apparently is too blatant to even bother amending the April 14<sup>th</sup> NOI, which expressly ties this PEIS to the CR barred Order 3310 Wildlands Policy. It is either sheer brazenness, or bureaucratic inability to alter BLM’s pro-stance of Order 3310 allowing its continued direction to move along on the same illegal course despite the moratorium of the CR. At this point even though through the review process of this PEIS the references to Secretarial Order 3310 might be removed; it will never legitimize this project. It underscores this administration’s motivation to stop all domestic sources of energy from being explored and extracted.

BLM stated that they have recently completed updating its inventory of lands with wilderness characteristics in each of the three states for the planning area, and the status of several areas originally proposed to be Areas of Critical Environmental Concern (ACECs) in Utah has changed since the preparation of the 2008 PEIS. In light of the combined weight of these several developments, as well as other policy considerations, the BLM has decided to take another look at the land use plan allocations made in the 2008 ROD

That is an incorrect statement for the RMPs in Utah. The only legitimate inventorying of lands with wilderness characteristics in Utah was completed as part of the process to revise the six Resource Management Plans (RMPs) in Utah (Price, Vernal, Moab, Monticello, Richfield and Kanab). Out of that process the Price BLM Field Office identified 97,100 acres of wilderness characteristics lands suitable for wilderness characteristics management. Additionally, the lands looked at for Wilderness Characteristics through the RMP on the West Tavaputs where this PEIS would apply in Carbon County was found as having a higher value for oil and gas production. Map R-11 of the Price RMP/ROD states, “Non-WSA Lands with Wilderness Characteristics not Carried Forward into the Approved Plan.” Therefore, in our view, any attempt to augment wilderness characteristics inventory already completed in Utah would be invalid, because it was done under the



## OS&amp;TS PEIS COMMENTS

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auspices of now defunct Secretarial Order 3310, which is barred by the moratorium (see discussion above). Moreover, no attempt has been made to amend any of the Utah RMP determinations of wilderness characteristics lands worthy of wilderness characteristics management. Therefore, any attempt to try to prop up the supposed necessity of the present PEIS with notions of so-called 'recently completed' wilderness characteristics inventories is invalid and merely belies further the illegitimate agenda-driven nature of this PEIS.

Further, while the updated inventory of lands with wilderness characteristics has been considered in the development of the alternatives and will be considered in the analysis of environmental consequences of possible future leasing and development, BLM noted in the April 14, 2011, NOI, "because this is a targeted planning process focusing on allocation of oil shale and tar sands resources, this planning initiative will not consider designating Wild Lands." further exposes the invalid, circular nature of BLM's concerted effort with the wilderness advocacy group lawsuit plaintiffs to manufacture a de facto wilderness allocation without legitimately amending an existing RMP and without complying with the 2003 Utah-Norton Wilderness Settlement Agreement. The updated inventory of lands (illegitimate as it is) appears to be a step toward ultimate designation of the implementation of Secretarial Order 3310. That is a transparent assertion, especially when considered in light of the April 14, 2011 NOI which clearly parked this whole effort under the Wildlands Order. This is all about an agenda to ratchet down a previously legitimate allocation of oil shale and tar sands lands to conform to the lawsuit plaintiffs' own vision of wilderness designation, plain and simple.

Since BLM has categorically given the involved State and Counties an open door treatment in allowing us to join them as a cooperating agency and then thrown out our comments and recommendations, violated the Energy Policy Act, The Data quality Act and the Congressional moratorium on Wildlands secretarial order 3310 and then placed into the draft an Agency preferred alternative that was never commented on by the cooperators and in place before the public comment process took place, Carbon County believes that this entire process should be thrown out and the existing Oil Shale and Tar Sands regulations be implemented without any need to amend RMP's that considered and planned for it during the RMP process.

Included with these comments is our Resolution No. 2012-02 that we want incorporated as part of the comments. It had been pleasure to comment again with the hope some of this information will be used or at least considered on this go-round. But judging by our past experience we will tend not to expect much from this agency to support the security of this nation to allow domestic extraction and production of its own natural resources.

Very truly yours,

CARBON COUNTY BOARD OF COMMISSIONERS



Michael S. Milovich  
Commission Chairman



## RESOLUTION NO. 2012-02

### RESOLUTION OF CARBON COUNTY STATE OF UTAH

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL  
(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING.

This Resolution is adopted in open meeting by the Board of Commissioners of Carbon County, Utah in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

#### BACKGROUND

As background to this Resolution, Carbon County, Utah recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic



EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and  
WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;



WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and



WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc..) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

## RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY CARBON COUNTY, STATE OF UTAH AS FOLLOWS:

1. Carbon County, Utah declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Carbon County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Carbon County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the



Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress:

4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.
6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

Passed this 4<sup>th</sup> day of April, 2012

**BOARD OF CARBON COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Michael S. Milovich, Chairman

Commissioner Milovich voted  
Commissioner Jones voted  
Commissioner Potter voted

Absent  
Yea  
Yea

**ATTEST:**

  
\_\_\_\_\_  
Robert P. Pero, County Clerk/Auditor

**mail\_ostseisarchives**

---

**From:** ostseiswebmaster@anl.gov  
**Sent:** Monday, April 23, 2012 1:29 PM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50110

Thank you for your comment, Mike Braaten.

The comment tracking number that has been assigned to your comment is OSTs2012D50110. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 23, 2012 01:28:40PM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50110

First Name: Mike  
Last Name: Braaten  
Organization: City of Rifle, Colorado - City Council  
Address: 202 Railroad Ave.  
City: Rifle  
State: CO  
Zip: 81650  
Country: USA  
Email: [mbraaten@rifleco.org](mailto:mbraaten@rifleco.org)

**Comment Submitted:**

The City Council of the City of Rifle greatly appreciates the Department of the Interior, Bureau of Land Management's review of past decisions regarding oil shale leasing and development and offers the following comments:

The City of Rifle, Colorado (population 9,500) sits at the base of the oil-shale rich Roan Plateau in the Piceance Basin. When commercial development of oil shale occurs, our community and region will again be the likely epicenter of oil shale development as it was in the late 1970s and early 1980s. Unfortunately, in 1982, our community was also the epicenter of the oil shale bust that resulted in an economic depression in our region that spanned close to two decades.

In recent years our community and region was heavily impacted by natural gas exploration and production occurring in nearby private and public lands. Natural gas development brought significant growth to our community and placed considerable demands upon our municipal infrastructure, resulted in a shortage of affordable housing and essential community workforce, caused material and labor costs to skyrocket and strained social services and law enforcement capacities. Full-blown commercial development of oil shale may have similar impacts to our community and region.

Although we are supportive of the current Oil Shale research and development activities, given oil shale's history in our region, the City wants to ensure that we understand the impacts that may result from commercial production and from each company's technologies on our community and region. Such questions as: What will development mean for our economy – both positive and negative aspects? How much water will be used, for what, and how will local watersheds be affected? How will our infrastructure, community services and facilities be impacted, including roads, water, sewer, housing, law enforcement, etc.? How will production activities be powered? How will the environment and wildlife be affected? What will be the impacts relating to hunting, fishing and recreation in the oil shale development areas? Often



we hear anecdotal responses to these questions, but like the industry, we need factual data on which to base our planning and infrastructure investment decisions.

We want to ensure that communities expected to be impacted by commercial development of oil shale have the appropriate and necessary financial resources to address and cope with the effects of production. Our community has learned from past energy development “booms” that investment in community services, facilities, and infrastructure is needed many years in advance of commercial production and the associated tax revenue. Additionally, as municipalities and counties in Colorado have experienced in recent years, energy tax revenues that have historically flowed to local governments to respond to energy development impacts have been usurped by the State Legislature to balance their budget in this down economy.

As in past comments on Oil Shale Development, the Rifle City Council strongly supports action by the federal government to develop an oil shale cumulative community impacts study for the anticipated commercial production regions and dedicate funding to address the identified local impacts prior to approval of commercial production. Additionally, the federal government should develop an incentive program for oil shale companies to provide meaningful up-front and on-going investment in local communities and to local governments directly affected by oil shale development and production.

Instead of selecting one of the alternatives put forward by BLM, the Rifle City Council requests that whatever alternative selected requires RD&D first. Additionally, we implore Secretary Salazar, BLM officials and our Congressmen and Senators to address the above mentioned issues through the federal regulatory or legislative processes to ensure that our community and region are prepared and have the necessary assistance in place prior to the commercial development of oil shale.

Thank you for your consideration of our concerns. Respectfully submitted on behalf of the City Council of the City of Rifle, Colorado.

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.



**COALITION OF LOCAL GOVERNMENTS**

925 SAGE AVENUE, SUITE 302  
KEMMERER, WY 83101

COUNTY COMMISSIONS AND CONSERVATION DISTRICTS FOR CARBON, FREMONT, LINCOLN,  
SWEETWATER, UINTA, AND SUBLETTE - WYOMING

May 4, 2012

**VIA E-MAIL, NO ORIGINAL MAILED**

<http://ostseis.anl.gov/involve/comments/index.cfm>

Oil Shale and Tar Sands Resources Draft Programmatic EIS

Argonne National Laboratory

9700 South Cass Avenue

EVS/240

Argonne, Illinois 60439

Re: Comments by the Coalition of Local Governments on the Allocation of Oil  
Shale and Tar Sands Resources on Lands Administered, Propose to  
Amend 10 Land Use Plans in Colorado, Utah and Wyoming

Dear Sir or Madam:

The Coalition of Local Governments (CLG) hereby submits its comments on the Oil Shale and Tar Sands Programmatic Draft Environmental Impact Statement (OS/TS PDEIS). The Coalition is an organization of Wyoming local governments including Little Snake River Conservation District, Lincoln County, Lincoln Conservation District, Sublette County, Sublette County Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County and Uinta County Conservation District. The Coalition members are cooperating agencies on the PDEIS.

CLG members established this organization to ensure that federal land decisions were consistent with the local governments' plans and policies and to pool their expertise and resources. The Coalition members have more than eight years of experience as cooperating agencies and have worked on more than 25 projects and land use plans, including numerous energy projects. CLG members are currently working on the sage grouse Resource Management Plan (RMP) revisions in Wyoming.



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As an initial matter, the Coalition notes that the due dates for these comments were poorly stated. The Notice of Availability for the Oil Shale Tar Sands PDEIS was published on February 3, 2012 by the Environmental Protection Agency, 77 Fed. Reg. 5513 (2012) and by the BLM on February 6, 2012. 77 Fed. Reg. 5833 (2012). The BLM notice provided that comments were due within 90 days of the EPA publication, which would be May 3, 2012. The EPA notice, however, incorrectly states that the comments were due May 2, 2012. To further confuse matters, the BLM web site states that the comments are due May 4, 2012. Several local governments formally requested additional time but in the absence of a response from BLM, the Coalition is filing these comments on May 4, 2012.

#### **1. WYOMING LOCAL GOVERNMENT ALTERNATIVE**

The Wyoming local governments support the land allocations in Alternative 1 for the oil shale program in Wyoming. Because Wyoming does not have an RD&D lease, it may well be appropriate for initial projects to start with an RD&D to determine which of the several proprietary techniques will work best. The local governments also assume that the lease stipulations that have been applied for oil and gas to protect soils, water, vegetation and fish and wildlife will also apply. In addition, the reclamation standards should also be similar given the amount of effort that has gone into Wyoming specific reclamation.

Much of the affected land is located within the boundaries of the Rock Springs Field Office (RSFO) which is currently revising its RMP. As currently postured, the designations identified in the preferred alternative for the OS/TS PDEIS will conflict with many pending RMP decisions, such as lands with wilderness character (LWCs), Areas of Critical Environmental Concern (ACECs) and other special designations. It would make more sense to allow the RSFO to handle this issue as an integral part of its energy development and land use planning in the ongoing plan revision process.

The rest of the high potential area in Wyoming is covered by the Kemmerer RMP, which was final in 2008. The OS/TS PDEIS does not provide any factual basis to revise the

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RMP decisions as they apply to oil shale development. The Kemmerer RMP adopted the Wyoming sage grouse strategy to protect core area habitat.

CLG members object to the effort to revise these land use plans through the back door without the data or information that was used or being used to write the land use plans. This is especially confusing for the public lands in the RSFO. The land allocations in Alternative 1, even if only for Wyoming, should be retained especially in light of the insufficient data found in the OS/TS PDEIS.

Under the 2008 rules, 43 C.F.R. Parts 3900, 3920, 3930, Research Demonstration and Development (RD&D) leases were issued before commercial lease rules were adopted. 43 U.S.C. §15927(e). The OS/TS PDEIS would expand RD&D without any commercial leasing.

The BLM signed a settlement agreement proposes amendments to the Oil Shale Final Rule. The proposed amendments require BLM to expressly state that it has discretion to deny an application converting an RD&D lease to a commercial lease based on environmental and other resource considerations and that BLM has discretion to reject an oil shale commercial lessee's proposed plan of development based on environmental or other resource considerations. This would add additional requirements under 43 C.F.R. §3926.10.

The proposed amendments require BLM to only consider issuing a commercial oil shale lease upon application for a conversion from an RD&D lease to a commercial lease, or after BLM issues a call for expression of leasing interest. The proposed amendments also require BLM to not issue any commercial lease unless it is shown that operations can be done without unacceptable environmental risk. Finally, the proposed amendments require plans of development for oil shale commercial leases to include watershed and groundwater protection plans, and environmental protection and mitigation plans, including defined standards for each of these requirements. BLM acknowledged that approval of any conversion to a commercial lease must be preceded by a NEPA analysis.



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These changes, when coupled with the discontinuous parcels made available for RD&D leasing in the OS/TS PDEIS alternatives, other than Alternative 1, will not provide the necessary assurance to industry that it will realize a return on investment. Any land configuration needs to be sufficiently contiguous that a company can recover the multi-million dollar investment that even an RD&D project requires. Alternatives 2 - 4 do not achieve that objective.

## **2. OS/TS PDEIS DOES NOT CONFORM TO SECTION 369 OF THE 2005 ENERGY POLICY ACT**

In 2005, Congress directed BLM to establish a commercial program for development of oil shale and tar sands. Section 369 of the Energy Policy Act (2005 EP Act) adopted on August 8, 2005 relates to "Oil Shale, Tar Sands, and Other Strategic Unconventional Fuels." 42 U.S.C. §15927. That title declared it to be the United States' policy that "oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. § 15927(b)(1). Congress also directed that it be United States policy that commercial development of oil shale "be conducted in an environmentally sound manner, using practices that minimize impacts." 42 U.S.C. §15927(b)(2).

The 2005 EP Act required that the Interior Secretary promptly follow the completion of the programmatic EIS with regulations establishing a commercial oil shale and tar sands leasing program. 42 U.S.C. §15927(d)(2) ("Not later than 6 months after the completion of the [PEIS] under this subsection, the Secretary [of the Interior] shall publish a final regulation establishing such [commercial oil shale and tar sands leasing] program. ").

Section 369 directs the Department of the Interior (DOI) to issue commercial oil shale leases 180 days after the final rules are promulgated. *Id.* Lease sales are to include consultation with states, local governments, tribal governments and others to determine the level of interest. *Id.* DOI promulgated the final rules in November 2008. 73 Fed. Reg. 69414 (2008). Rather than follow the law, DOI suspended all oil shale leasing in 2009 and has ignored its Task Force reporting obligations. 42 U.S.C. §15927(h).

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While DOI is required to file reports with Congress each year, none has been prepared since 2008. <http://www.unconventionalfuels.org/publications.html>. The only reports now prepared are on "Secure Fuels."

The extent of Congress' commitment to unconventional fuels including oil shale and tar sands is also found in the establishment of a Task Force. 42 U.S.C. §15927(h). Department of Energy is to create commercial strategic fuel development program and to coordinate with state and local governments. DOI was to prepare a new assessment of priority areas in the Green River Region, which includes Wyoming, Utah and Colorado. *Id.* at §15927(m)(B). The heavy oil assessment was also to be updated. *Id.* §15927(p).

BLM proceeded to implement the direction by preparing a programmatic EIS that addressed the environmental impacts of oil shale and tar sands development and identified the public lands with the best potential. Based on the two considerations, BLM identified about two million acres of public land in Wyoming, Utah and Colorado as suitable and available for oil shale and tar sands development. ROD, 2008 OS/TS PFEIS at 1-4. BLM also promulgated rules to implement the commercial leasing program. 43 C.F.R. Parts 3900, 3920, 3930, 3936.

The OS/TS PDEIS is intended to analyze the impacts of a commercial leasing program, not the RD & D program authorized in subsection (c). 42 U.S.C. §15927(c). The 2008 PFEIS accomplished this mandate but the OS/TS PDEIS does not. Instead, its identification of land omits high potential land and limits development to small and scattered areas that it makes a commercial program less feasible and is calculated to discourage commercial development. The OS/TS PDEIS admits this when it claims the changes are needed to conduct additional research. OS/TS PDEIS at 1-5. The law authorized RD&D separately and did not give the Secretary the discretion to substitute a commercial leasing program with another RD&D leasing program which applies to 25% of the land previously classified as suitable and available.



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**3. OS/TS PDEIS FAILS TO CONFORM TO RMP PROCEDURES**

**a. OS/TS PDEIS Supersedes RMP Decisions Without Adequate Rationale**

The preferred alternative will remove from development lands with alleged wilderness character, notwithstanding a congressional prohibition on changing management to protect these lands. [Continuing Appropriations Act 2011, Pub. L. 112-10 (2011CR); Continuing Appropriations Act 2012, Pub. L. 112-36 (112<sup>th</sup> Congress) H.R. 2608, 10/05/11] The OS/TS PDEIS also proposes to exclude ACECs and other areas nominated by special interest groups, including groups that sued BLM in 2009, from oil shale or tar sands leasing. In many cases, the preferred alternative vetoes recent land use planning decisions, such as those for the Kemmerer RMP. In the case of the Rock Springs RMP, the OS/TS PDEIS will essentially make decisions that bind the plan revision process, without the requisite analysis or data.

The preferred alternative excludes more than 75% of the lands previously determined to be available for oil shale or tar sands leasing. This occurs even though much of the same land area is still classified as suitable and available for oil and gas leasing.

The OS/TS PDEIS purports to override the local land use planning process by designating LWCs, proposed ACECs and other protective sites, including the ever-growing Adobe Town area. Programmatic decisions cannot override the RMP process and as such, BLM is running roughshod over the rules and procedures established for land use decisions by implementing the resource allocations well ahead of information and analysis.

The Rock Springs Field Office initiated its plan revision in Spring of 2011. Much of the Wyoming high potential area is located in the Rock Springs Field Office but the OS/TS PDEIS appears to use proposed LWCs and ACECs that have not yet been fully addressed within the cooperating agency process, let alone a DEIS. CLG members cannot even comment in this process because it would violate the confidentiality agreement that it signed with BLM. This dilemma illustrates the flaws in BLM's efforts to

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impose top down decisions on LWCs and ACECs as well as the Adobe Town area, when those issues are still being addressed among the cooperating agencies. If BLM proceeds on this time table, it will eviscerate the land use planning process. This situation also suggests that national BLM has chosen to proceed without regard to its obligation to coordinate with local governments. For instance, Sweetwater County went on record a year ago as only supporting special management for the Adobe Town area within its wilderness study boundaries. The OS/TS PDEIS protects a much larger area even though the Wyoming Rare and Uncommon Area classification only prohibits non-coal surface mining and allows all other forms of mineral development. Wyo. Stat. 35-11-112(a)(v); Environmental Quality Commission rules, Chapter VII.

**b. Sage Grouse Management**

The State of Wyoming has been aggressively developing a sage grouse strategy for management since 2004. By 2008, the sage grouse core areas had been defined and management guidelines developed. Wyoming Gov. E.O. 2008-2, 2010-4; 2011-5. Wyoming BLM largely adopted or followed these guidelines in the RMP revisions for the Kemmerer, Pinedale and Rawlins Field Office. Thus, the candidate status of the sage grouse is not a basis to remove these lands from oil shale and tar sands development, especially in light of the significant restrictions already in place. The OS/TS PDEIS omits these entirely.

Wyoming BLM initiated a statewide RMP amendment for the sage grouse to address the 2008 executive order in fall of 2008. [BLM IM 2010-012 Sage Grouse Habitat Management, December 29, 2009; IM 2010-013 Oil and Gas Leasing Screen for Greater Sage Grouse, December 29, 2009] CLG members are cooperating agencies and this process is well along.

**4. IMPLEMENTATION OF LWC CLASSIFICATIONS IN RMPs IS UNLAWFUL**

A significant percent of the excluded acreage in the OS/TS PDEIS is justified on the basis that the LWCs must be protected. OS/TS PDEIS at 1-5, 2-12, 2-21, 2-52.



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**a. OS/TS PDEIS violates Congressional Funding Freeze on LWC  
Identification and Management**

On December 22, 2010, Secretary Salazar announced a new initiative to identify and manage public lands with wilderness character. Secretarial Order No. 3310 Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management (Dec. 22, 2010).<sup>1</sup> This action was followed with the adoption of manuals to guide BLM employees in the implementation of the extra-wilderness designation process. The resulting controversy and outcry, not to mention Director Abbey's admission that no specific section of Federal Land Policy Management Act (FLPMA) authorized the identification of lands with wilderness character outside of Section 603, led Congress to defund the entire initiative. [Continuing Appropriations Act 2011, Pub. L. 112- 10 (2011CR); Continuing Appropriations Act 2012, Pub. L. 112-36 (112<sup>th</sup> Congress) H.R. 2608, 10/05/11]

BLM has long contended that a mere inventory of wilderness character falls within its authority, citing 43 U.S.C. §1711(a). But FLPMA is equally clear that BLM cannot change land management based on an inventory unless and until the land use plan is amended. *Id.* The OS/TS PDEIS uses an undisclosed wilderness inventory and then proposes to change the management of these areas to protect the alleged wilderness character without disclosure of the basis for BLM's determination. This is exactly what S.O. 3310 directed BLM to do. When Congress froze all funding for it, two months after the *Colorado Environmental Coalition v. Salazar* (09-0085, 09-0091) settlement, BLM's hands were tied. The apparent decision to proceed regardless of the funding freeze is in contempt of Congress and unlawful. 31 U.S.C. §1341.

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<sup>1</sup> The Wild Lands Policy and IM 2011-154 contradict the commitments made to the State of Utah, the U.S. Congress and the public when the Secretary stated that he would honor the Settlement Agreement between Utah and DOI (Answering Yes to the question from Senator Bennett "Do you agree that currently the Department has no authority to establish new WSAs (Post-603 WSAs) under any provision of law, such as the Wilderness Act of [sic] Section 202 of FLPMA?") The Secretary also stated BLM had no authority to impose nonimpairment management on non-WSA lands.

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Calling these areas LWCs does not change the result. These areas are allegedly wilderness suitable and BLM proposes to manage them in the same manner as it would have had Congress not shut down all funding related to S.O. 3310. Changing the name from "Wildlands" to "LWCs" does not make the action any more lawful. Apparently, BLM acknowledges the difficulty and has assiduously avoided any kind of public rulemaking process to implement the switch from S.O. 3310 to IM 2011-154.

The OS/TS PDEIS contradicts Congress' clear direction that BLM cease and desist from implementing the provisions of S.O. 3310. The fact that BLM put the implementing manuals in abeyance but issued Instruction Memorandum (IM) 2011-154 that implements the Order does not excuse BLM from the clear violation of Congress' edict.<sup>2</sup> IM 2011-154 suffers from procedural deficiencies as well. It was issued without coordinating with local governments, public comment or in accordance with rulemaking procedures. Thus, it independently violates Federal Land Policy and Management Act (FLPMA) mandate that its provisions be implemented through rulemaking, 43 U.S.C. §1740.

An instruction memorandum issued by BLM in order to evade the funding and implementation freeze on S.O. 3310 enjoys little or no presumption of legality. *United States v. Mead Corp.*, 533 U.S. 318 (2001) (holding that the court owes little deference to agency guidelines). By implementing the IM, BLM runs a serious risk that the OS/TS PDEIS will be set aside.

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<sup>2</sup> The Antideficiency Act provides that "an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; involve the government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law . . . ." 31 U.S.C. §1341. The act imposes criminal penalties for violation, *Id.* at §1350, and authorizes adverse personnel action for employees that violate the law. *Id.* at §1349.



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**B. NO LEGAL AUTHORITY TO IMPLEMENT SECRETARIAL ORDER 3310 OR SIMILAR DIRECTION**

Unlike the definition of multiple use for National Forests, 16 U.S.C. §529, FLPMA does not include wilderness as one of the statutory multiple uses. 43 U.S.C. §1702(c). Wilderness has its own definition, which is limited to Section 603. ("(i) The term 'wilderness' as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of Title 16." *Id.* §1702(i). The term 'wilderness' is found only in the definition section, 43 U.S.C. §1702(i) and the wilderness review provisions of Section 603, 43 U.S.C. §1782; 43 C.F.R. §1601.0-5(i). Section 603 is the only provision in federal law that authorizes the identification, study and recommendation of public lands for wilderness designation by Congress. Thus, BLM is not at liberty to add wilderness to other provisions in FLPMA when Congress so clearly chose not to.

Only Section 603 of FLPMA authorizes BLM to manage lands so as to not impair their wilderness character. *Tri-County Cattleman's Association Idaho Cattlemen's Association*, 60 IBLA 305, 314 (1981). There is no other statutory authority for BLM to study and manage public lands as if they were wilderness. Public lands are to be managed so as to not unduly and unnecessarily degrade the resources. (43 U.S.C. §1732(b) [nondegradation standard], except for WSAs which are managed so as to not impair the wilderness character.) *Id.* at 1782(c).

The Interior Secretary's authority to identify public lands as wilderness study areas under Section 603 has expired. *State of Utah v. Babbitt*, 137 F.3d 1193, 1206, n.17 (10<sup>th</sup> Cir. 1998) (Secretary Babbitt wrote "I also agree with you that FLPMA's section 603 no longer provides authority to inventory BLM land in Utah for wilderness values."). BLM has attempted to claim discretion to manage lands to preserve their wilderness character but the planning rules do not so provide. The rules were revised to remove wilderness study from the general planning process and have never been amended to make wilderness study part of the land use planning process.<sup>3</sup>

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<sup>3</sup> By comparison, the Forest Service revised its planning rules to integrate wilderness study and recommendations into each plan revision. 36 C.F.R. §219.27

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Section 202 of FLPMA provides for the development and revision of land use plans. 43 U.S.C. §1712. Land use planning must have coordination with state and local governments, public involvement and be consistent with FLPMA. 43 U.S.C. §1712(a). The criteria for developing and revising land use plans, includes (1) using and observing the principles of multiple use and sustained yield set forth in FLPMA and other applicable laws, 43 U.S.C. §1712(c)(1); (2) interdisciplinary approach, §1712(c)(2); (3) priority to designate ACECs, §1712(c)(3); and (4) "to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located," §1712(c)(9). FLPMA further states: "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." *Id.*

Nothing in Section 202, which governs land use planning, authorizes wilderness study or wilderness-type management. The history of the planning rules shows that the word "wilderness" was deleted from the draft of the planning rules on purpose. When BLM wrote the rules governing land use plans, it originally defined a resource management plan as including "the initial determination of whether a wilderness study area shall be recommended to the President for recommendation to the Congress as suitable or unsuitable as an addition to the National Wilderness Preservation System." 43 Fed. Reg. 58764, 58768-69 (1978) draft 43 C.F.R. §1601.0-5(p)(2). The definition of a resource management plan was later revised to delete reference to wilderness study area recommendations. 44 Fed. Reg. 46386 (1979). Thus, BLM has no regulations in the land use planning chapter authorizing establishment of wilderness type areas or authorizing nonimpairment management for such lands other than designated WSAs designation pursuant to Section 603, which expired.

BLM adopted the Wild Lands Policy through three Manuals, based on its claimed discretion in FLPMA, Sections 201, 202 and 302 of FLPMA. Those provisions do not

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(1982).



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support BLM's claimed authority to designate Wild Lands or LWCs or to manage them as if they were designated WSAs for nonimpairment of the wilderness character.

IM 2011-154 was adopted without proper comment procedures and without coordination with local governments. Under Section 202(a), BLM has no choice but to coordinate with local governments and to resolve conflicts in land use plans. 43 U.S.C. §1712(a). So far BLM has failed to do so on this very important issue. No Wyoming local government within the affected area supports proposed or identified LWCs. Several of the applicable local government plans oppose new wilderness character areas. BLM has clearly violated Section 202 by not coordinating both its inventory and LWC determination with the local governments.

The OS/TS PDEIS also fails to identify which, if any, inventory it has used to identify the LWCs. For example, in the Rock Springs Field Office, BLM has maps of the alleged LWCs which were identified without any coordination with local governments. The single map in the OS/TS PDEIS fails to identify these areas or to disclose the factual basis for the LWC classification. OS/TS PDEIS Figure 2.3.3-3. Thus, it is impossible to divine their location or the resource values that prompted the classification being used in the OS/TS PDEIS. If CLG had access to this information it could provide site specific documentation of the errors in the premise that these are LWCs.

These lands are not "wilderness" as that term is used in the Wilderness Act. These areas are heavily roaded and include the Wyoming Checkerboard where Anadarko owns the alternating sections. There are powerlines, rights-of-way for pipelines, wind farms as well as coal mining and oil and gas development.

It appears that the OS/TS PDEIS adopts this unofficial and inaccurate information and excluded significantly high potential public lands from oil shale leasing. CLG requested the information regarding these inventories in November and never received it. CLG assumes that for Utah the OS/TS PDEIS uses the Utah HR 1925 lands without regard to the RMP decisions that evaluated those lands in 2008.

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Figure 2.3.3-3 depicts the Wyoming LWCs without providing any other information or even labels. Chapter 6 of the OS/TS PDEIS lists the areas and acreage without providing maps or a description. The OS/TS PDEIS uses a limited and incorrect definition of wilderness. Footnote to Table 6.2.3 states: "The key characteristics of wilderness that may be considered in land use planning include an area's appearance of naturalness and the existence of outstanding opportunities for solitude or primitive and unconfined types of recreation." This statement is materially incorrect, because the definition of wilderness requires that an area be roadless and that it be greater than 5,000 acres. 16 U.S.C. §1131(a). The OS/TS PDEIS conveniently drops the first two criteria.

Table 6.1.1-2 purports to list LWCs in Wyoming, when that classification has never been adopted or even made public. The Adobe Town WSA consists of 85,710 acres. None of the listed areas correspond to WSAs designated in 1980. Since there is no information provided, CLG members cannot provide meaningful comments.

## 5. OS/TS PDEIS FAILS TO CONFORM TO NEPA RULES

### A. PURPOSE AND NEED

"Agency action should be overturned only when the agency has 'relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The OS/TS PDEIS meets the definition of arbitrary and capricious as the explanation for the land use allocations do not have sufficient explanation or documentation to support them, and the explanation for revision runs counter to the facts.



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**i. Real Purpose and Need Unaddressed**

The Notice of Intent and the statement of Purpose and Need in the PDEIS omit the real basis for the new programmatic EIS. BLM settled two lawsuits, which challenged both the 2008 PFEIS Record of Decision *Colorado Environmental Coalition (CEC) v. Salazar*, No. 09-0085; and the regulations promulgated to implement an oil shale and tar sands leasing program, *Colorado Environmental Coalition (CEC) v. Salazar*, 09-0091. The conduct of the two cases and, particularly, the CEC's failure to prosecute the cases strongly suggests that this was a friendly litigation with an equally friendly settlement.<sup>4</sup> Plaintiffs filed the two cases in February of 2009, but the government sought numerous extensions of time to answer and settled the case shortly before the administrative records were to be filed before the court.

BLM's reconsideration of the 2008 OS/TS ROD is based entirely on the terms of the settlement in which BLM committed to this revision. *CEC v. Salazar*, #63 ¶1 ("No later than 120 days after this Settlement Agreement becomes effective, Defendants will publish a notice of intent ("NOI") to consider amending each of the land use planning decisions made by the 2008 OSTs ROD.") BLM also committed to consider excluding from oil shale and tar sands development all "lands with wilderness character" a term that did not exist until December 23, 2010. BLM also agreed to exclude existing and proposed ACECs and the Adobe Town rare and uncommon area. The state law designation of a rare and uncommon area only prohibits noncoal surface mining but allows coal mining under certain conditions, as well as oil and gas development. EQC Rules Ch. VII. It cannot apply to public land. *Calif. Coastal Commn. v. Granite Rock Co.*, 480 U.S. 572 (1987) (holding state's coastal zone management could not regulate mining on federal land).

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<sup>4</sup> It is ironic that the environmental plaintiffs excoriated BLM for settling the Utah wilderness inventory case with the State of Utah and yet clearly filed these two cases for the purpose of securing sweetheart terms to eviscerate the oil shale and tar sands programs.

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In the rulemaking case, BLM committed to amending the oil shale and tar sands leasing rules within 15 months. BLM has made no move to initiate the changes. The settlement terms mandate the content of the final rules to a degree that violates public policy and the law, because BLM agrees in advance to what the final rules will provide. BLM also agreed to deny applications to convert RD&D leases to commercial leases based on environmental and resource considerations, to reject plans of development and to limit commercial leases to RD&D lessee after expressions of interest and detailed stipulations. *CEC v. Salazar*, No. 09-0091, Doc. No. 80-1 ¶¶1-6. The settlement predetermines the outcome of the rulemaking such that BLM has relinquished its authority and discretion.

The 2008 regulations remain in effect but cannot be implemented under the terms of the settlement, which prohibit oil shale leasing. By accepting the plaintiffs' demands for content, BLM has failed to comply with the 2005 EP Act, Section 369 to develop a commercial oil shale and tar sands leasing program.

As is clear in the OS/TS PDEIS, BLM also committed to a predetermined outcome in the programmatic EIS to reduce the potential for oil shale and tar sands development by removing 75% of the land base and limiting the remnants of the program to research and development, rather than the commercial scale mandated by federal law. The fast pace of the drafting of the OS/TS PDEIS and the fact that entire chapters are largely the same as the 2008 PFEIS. BLM is doing a rush job to issue a final decision without regard to the facts or competing legal obligations and constraints.

## **ii. Purpose and Need for Revision Unsupported in OS/TS PDEIS**

The Notice of Intent to revise the 2008 Oil Shale and Tar Sands FEIS stated: "The BLM has decided to take a fresh look at the land use plan allocation decisions made in the 2008 ROD associated with the Programmatic EIS, in order to consider which lands should be open to future leasing of oil shale and tar sands resources." 76 Fed. Reg. 21003 (2012). The Notice of Intent went on to state that:



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As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale, and approximately 431,224 acres of public land to remain available for potential development of tar sands.

*Id.*

The OS/TS PDEIS expresses the purpose and need as necessary to determine which lands should be removed from the classification of available for leasing. "The purpose and need for this proposed planning action is to reassess the appropriate mix of allowable uses with respect to oil shale and tar sands leasing and potential development. Specifically, the BLM will consider amending the applicable Resource Management Plans (RMPs) to specify whether any areas in Colorado, Utah, and Wyoming currently open for application for future leasing and development of oil shale or tar sands should not be available for such application for leasing and development." PDEIS 1-4.

The criteria to exclude high potential oil shale and tar sands lands from leasing suffers several flaws. First, OS/TS PDEIS does not and indeed cannot explain how it conforms to Section 369, since BLM previously concluded that similar alternative would not conform. 2008 Record of Decision PFEIS (2008 ROD) at 22 ("Much of the most geologically prospective acreage would be excluded under Alternative C; in particular areas which are in close proximity to three of the six RD&D leases would be excluded. In addition, this unreasonably fragments the area that would be available for application, resulting in parcels that are unlikely to be explored, leased, or developed.") Second, Congress has prohibited BLM from spending federal funds to classify and manage lands as LWCs as directed in S.O. 3310. Alternatives 2-4 propose exclusions based on LWCs, thus implementing the S.O. 3310 in defiance of the ban on spending federal

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funds to do so.<sup>5</sup> Third, all of the alternatives exclude from oil shale leasing the Adobe Town Rare & Uncommon Area, which is a state law classification that allows leasing but prohibits mining. The rare and uncommon designation cannot apply to public land, because the 1872 mining laws, as amended, preempt state law. *Calif. Coastal Commn. v. Granite Rock Co.*, 480 U.S. 572 (1987) (holding state's coastal zone management could not regulate mining on federal land).

The Coalition has previously explained that the larger Adobe Town area is not supported by Sweetwater County and impairs private land uses. Fourth, the OS/TS PDEIS provides no information about these areas, although many of the ACECs are merely proposed. Hence, there is no 'fresh look' nor does the OS/TS PDEIS disclose the new information upon which BLM is relying to support the actions proposed in the OS/TS PDEIS. The OS/TS PDEIS does not provide any information that would support the status of these areas or their exclusion. The apparent rush to complete the OS/TS PDEIS resulted in omission of the description of areas to be excluded, and this failure to describe or analyze the areas prevents the public and coordinating entities from meaningful public comment.

#### **b. Detailed Analysis of Alternatives**

The OS/TS PDEIS identifies the Preferred Alternative as 2(b).

The BLM has selected Alternative 2(b) as the Preferred Alternative. The Preferred Alternative would make approximately 461,965 acres available for future consideration for commercial oil shale leasing and 91,045 acres available for application for commercial tar sands leasing, but only for research, development, and demonstration (RD&D) leases. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 CFR Subpart 3926 for

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<sup>5</sup> BLM's actions violate the Anti-Deficiency Act, 31 U.S.C. §1341 and the involved officials could face adverse employment actions, *Id.* at §1350, and criminal penalties, §1349.



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conversion to a commercial lease. The preference right acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease.

## OS/TS PDEIS at i.

The OS/TS PDEIS, however, does not contain any specific analysis of the expanded RD&D program that is being proposed in lieu of the commercial leasing program. The OS/TS PDEIS attempts to compensate for this defect by stating:

The environmental impacts of Alternative 2(b) would be analytically indistinguishable from those of Alternative 2(a). Only the method of obtaining a lease would be different. Accordingly, the analysis in this PEIS of Alternative 2 applies fully and equally to both alternatives. To the extent there may be differences in environmental consequences between Alternative 2(a) and 2(b), these would be related to the timing of the commencement of impacts, as well as, possibly, length of disturbance. However, these issues are best addressed in the lease and/or project-specific analysis.

OS/TS PDEIS at ES-7, 2-35. The OS/TS PDEIS states that this alternative was not developed until quite late in the process.

As the Draft PEIS was being developed, the idea for this alternative emerged. It is presented here in brief. This alternative is not noted elsewhere in the document but will be developed further in preparation of the Final PEIS. Analytically, this subalternative is indistinguishable from Alternative 2(a) in terms of environmental consequences. Therefore further environmental analysis in preparation of the Final PEIS is not anticipated, although more detailed explanation may be provided, particularly in response to comments received.

## OS/TS PDEIS at 2-35.

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The OS/TS PDEIS statement that Alternative 2(b) environmental impacts are basically the same as Alternative 2(a) is untrue. Alternative 2(b) changes the timing of oil shale leasing to slow it down and this change in timing significantly changes the nature of the impacts on water, surface disturbance. NEPA requires agencies to consider direct, indirect, and cumulative effects in the context of geography and timing. 40 C.F.R. §1508.25. The preferred alternative delays in issuing RD&D leases and not issuing commercial leases will change the scope and impact and must be separately analyzed.

The very limited information about Alternative 2(b) and the omitted discussion of the imminent rule changes do not provide the public with sufficient information to determine whether, in fact, it is virtually identical to Alternative 2(a). If Alternative 2(b) is essentially the same, then BLM should and could have changed Alternative 2(a). BLM has already committed to rule changes in the CEC settlement agreement. The OS/TS PDEIS omits all discussion, even though the rulemaking is a connected action that falls within the scope of this EIS and failure to discuss the connected actions violates NEPA. 40 C.F.R. §§1501.7; 1508.25. For instance, the OS/TS PDEIS claims Alternative 2(b) will change the lease terms but provides no information on what those changes will be, other than it will only authorize RD&D leases. *Id.* at ES-7, 2-35.

NEPA requires that each alternative be analyzed in detail. 40 C.F.R. §1502.14(b) (substantial treatment must be devoted "to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."). The discussion of alternatives in the EIS must be sufficient to permit a reasoned choice among the options." *State of Wyoming v. USDA*, 661 F.3d 1209, 1243 (10th Cir. 2011) (quoting *AWARE v. Colo. Dep't of Transp.*, 153 F.3d 1122, 1130 (10th Cir. 1998)). BLM's failure to explain the preferred alternative or its impacts on the respective states and communities, requires that BLM withdraw the draft and revise or issue a supplement to explain the preferred alternative. 40 C.F.R. 1502.9 ("If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.")

Alternative 2(b) does not conform to Section 369 because it continues the RD&D program instead of providing for a commercial leasing program. While an agency can



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consider an alternative that requires additional authority, it must disclose this fact. *Forty Questions on CEQ NEPA Regulations*, 46 Fed. Reg. 18026 (1981) as amended 51 Fed. Reg. 15618 (1986), Answer to Question 2(b). The OS/TS PDEIS does not propose an amendment to the 2005 EP Act to modify the mandate.

**c. Omission of Significant New Information**

The Purpose and Need for the OS/TS PDEIS is justified as a “fresh look” at oil shale and tar sands development. 76 Fed. Reg. 21003 (2011). The OS/TS PDEIS is not in fact a “fresh look,” it is merely a retread of an alternative previously rejected by BLM on the grounds that it would not conform to Section 369 of the 2005 EPA. [2008 ROD at 22].

The purposeful omission of new information is significant and violates NEPA. Since the 2008 ROD was signed, several companies have been developing oil shale pursuant to the RD&D leases. The OS/TS PDEIS omits these results and progress reports. Similarly advances in technologies and actual experience with these technologies has been omitted. Instead, the OS/TS PDEIS repeats throughout the conclusion that oil shale and tar sands are not commercially viable and also repeats old data regarding the amount of water, power and surface disturbance.

The OS/TS PDEIS excludes new information regarding oil shale and tar sands technology and makes very limited the use of the 2010 and 2011 USGS assessments of potential. OS/TS PDEIS 2-77. Chapter 3 and App. A are very similar, if not identical, to the 2008 FEIS and notably do not discuss oil shale extraction technology used by Red Leaf or Enefit.

The OS/TS PDEIS purports to include new information regarding sage grouse, LWCs and ACECs but the information is vague and incomplete as to preclude any kind of meaningful analysis. The OS/TS PDEIS lacks a discussion disclosing the resource values of these areas, the basis for the respective classification, or the other current land uses. The OS/TS PDEIS does not discuss the Wyoming sage grouse strategy or how BLM adopted the state strategy as an interim protection.

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Many of these areas have oil and gas leases and even production, which would contradict the description as LWCs. In Wyoming, the OS/TS PDEIS omits that these areas are also located in the Wyoming Checkerboard where the private land is owned by Anadarko, a gas development company. The OS/TS PDEIS concludes that private land is inconsistent with development when the private lands in Wyoming have been developed for decades and generally in conjunction with public lands.

While BLM could theoretically decide not to issue individual leases, it does not have the discretion to simply discard new and relevant information. This information is environmentally significant since it shows retort methods using modest amounts of water and causing significantly less surface disturbance than assumed in 2008. NEPA requires BLM to consider significant new information and this omission results in a significant bias of the OS/TS PDEIS against additional oil shale and tar sands development notwithstanding the congressional mandate to proceed with this program.

Similarly, the OS/TS PDEIS omits the statutorily required assessment of oil shale and tar sands potential. 42 U.S.C. §15927(m). The USGS Assessment reports completed in 2010 and 2011 identified additional land as having high potential but the OS/TS PDEIS did not use this report in its identification of potential lands. Instead, the OS/TS PDEIS simply modified the areas identified in 2008 and made them 75% smaller.

The omission of new information is further documented in the fact that many of the chapters, especially Chapter 3 and the Appendices, are largely unchanged from the 2008 PFEIS. This only shows that BLM limited its update the OS/TS PDEIS to the alleged LWCs and other special designations as a basis to marginalize a congressionally mandated program.

**d. OS/TS PDEIS Dismissal of Technology Fails to Acknowledge  
Significant Scientific Controversies**

At a minimum, BLM must acknowledge that there is a scientific controversy regarding its key assumptions of environmental impact and support its position. 40 C.F.R. §1508.127(b)(4); *Middle Rio Grand Conservation Dist. v. Norton*, 294 F.3d 1220, 1229



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(10<sup>th</sup> Cir. 2002) (setting aside critical habitat designation EIS on the basis that “[t]he wide disparity in the estimates of water required for the designation, and the associated loss of farmland acreage, indicate that a substantial dispute exists as to the effect of the designation.”). Like the above decision, there is a wide disparity in estimates of water, surface area and electrical power assumed to be necessary for oil shale development. BLM, like the USFWS, must address the disparities, especially since the newer data reflect new information.

The OS/TS PDEIS repeats the refrain that oil shale development will require more than 1 barrel of water for each barrel of oil. OS/TS PDEIS 4-3, 4-9, 4-11, 4-33, 4-47, 4-48, 5-32, 5-35, A-85. As described by Red Leaf and Enefit, two companies operating in Colorado and Utah under RD&D leases, new technology does not rely on large amounts of water in the retort process. The R&D program was intended to provide BLM with this type of information, yet it is excluded from the OS/TS PDEIS. By using outdated or erroneous assumptions, the OS/TS PDEIS exaggerates the water and power needs as well as the surface disturbance.

The same defects apply to the OS/TS PDEIS assumptions about the size of the surface disturbance and the amount of electrical power needed. OS/TS PDEIS at A-46, A-62, A-80, A-84, A-85. In part, these errors arise because the BLM never updated Chapter 3 or the Appendices. These same assumptions are carried through to Chapters 2 and 4-6, thus tainting the entire analysis with erroneous assumptions.

The above assumptions are relevant to the OS/TS PDEIS conclusion that oil shale and tar sands have not been shown to be commercially viable. OS/TS PDEIS at 2-57, 2-76, 3-238. This very curious statement cannot be reconciled with the fact that the province of Alberta has been producing oil from tar sands for more than 20 years and even transports tar sands oil to Utah for refining. Similarly, Enefit has been producing oil from oil shale for more than 30 years. The OS/TS PDEIS does not provide any definition of commercial viability but proven business operations should suffice and it is inexplicable that the OS/TS PDEIS repeats a conclusion that is contradicted by incontrovertible facts.

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The issue of commercial viability is also the basis for Alternative 2b, which would actually limit oil shale development to another RD&D program, without authorizing commercial leases. The preferred alternative rests on the highly disputed premise that oil shale is not commercially viable. NEPA requires that BLM disclose and discuss scientific controversies. The OS/TS PDEIS does not.

**6. ONE-SIDED ECONOMIC AND SOCIAL ANALYSIS**

The OS/TS PDEIS assumes that oil shale and tar sands development will lead to a boom and bust economic cycle. OS/TS PDEIS 2-36, 3-242. Based on that premise, the OS/TS PDEIS describes Alternative 1 as harmful and Alternatives 2-4, which feature little to no development, as beneficial. OS/TS PDEIS at ES-9, Table 2.3.2-2, Table 2.4.2-2, Table 2.6-1.

The OS/TS PDEIS omits the fact that the lands classified as high potential are in the regions where there is already a viable energy economy. For example, in southwestern Wyoming, there are several major gas fields producing conventional and coalgas, including Pinedale Anticline, Jonah, Moxa Arch, Continental Divide and Hiawatha. There are numerous other plays for oil and natural gas as well. Coal mining plays important role in Sweetwater and Lincoln Counties, with trona also in Sweetwater and Uinta Counties. Construction of wind farms and related transmission lines continues at a rapid pace as well. Thus, oil shale will add to the economy but is unlikely to be significant enough to create an economic boom.

The OS/TS PDEIS fails to consider the cumulative impacts and connected actions in this discussion of the economic and social impacts. It is true that the current energy development has generated housing shortages and pressure on existing roads. But Wyoming has one of the lowest unemployment records in the country and has weathered the severe recession, and in reality a national depression, far better than other states such as California, Oregon and Washington.

Taking the OS/TS PDEIS discussion to its logical conclusion, one would conclude that it is BLM's view that it is better for the residents of rural counties and communities to



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remain poor and isolated. OS/TS PDEIS at ES-9, Table 2.3.2-2, Table 2.4.2-2, Table 2.6-1. It is correct that the upsurge in energy development has changed western Wyoming communities. There is more traffic, more demand for housing and other services. There has also been more opportunity for jobs and to lease or sell private land related to energy projects, with the injection of cash into the economy. Certainly, the State of Wyoming and the trust beneficiaries, the University and Wyoming Game & Fish Department, have also seen significant increases in revenues, which allowed Wyoming to avoid the job losses, bank failures and bankruptcies that haunt many other states and large cities.

The oil shale program would add to the existing energy industry but would be a relatively small portion. Wyoming is already the second largest recipient of federal royalty revenues and revenues from oil shale would not significantly change that. It would, however, represent continued diversification in energy development.

## 7. CONCLUSIONS AND RECOMMENDATIONS

The OS/TS PDEIS suffers from a number of fatal flaws.

- ◆ Any alternative needs to conform to Section 369 of the 2005 EPA, retain the land allocations adopted in 2008 to avoid discontinuous development, and ensure that a commercial leasing program is feasible;
- ◆ Implementation of LWC management in Alternatives 2, 3 and 4 violate the congressional limitation on the expenditure of funds to implement S.O. 3310 and exceed BLM's authority;
- ◆ All of the alternatives except Alternative 1 violate FLPMA land use planning processes and rules by superseding the ongoing plan revision for the Rock Springs area;

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- ◆ OS/TS PDEIS violates NEPA
  - ❖ by failing to support the purpose and need in the PDEIS;
  - ❖ by failing to fully analyze the preferred alternative so that the public can meaningfully comment;
  - ❖ omitting significant new information regarding oil shale and tar sands potential and technological advances;
  - ❖ failing to fully disclose the basis for excluding land areas from oil shale and tar sands development, when such areas were proposed by special interest groups without providing maps, facts, or rationale to support the adoption of these proposals;
  - ❖ failing to address the scientific controversies regarding the environmental impacts and resource needs for oil shale and tar sands development.

The Coalition members appreciate the opportunity to comment on this draft, but believe that unless BLM issues a new draft or a substantive supplement, the OS/TS PDEIS cannot survive judicial scrutiny.

Sincerely,

/s/ Kent Connelly

Kent Connelly, Chairman

Coalition of Local Governments

cc: Governor Matt Mead  
Senator Mike Enzi  
Senator John Barrasso  
Congressman Cynthia Lummis



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**From:** ostseiswebmaster@anl.gov  
**Sent:** Friday, May 04, 2012 3:09 PM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50314  
**Attachments:** Colorado\_Public\_Comments\_on\_Oil\_Shale\_PEIS\_OSTs2012D50314.docx

Thank you for your comment, Ginny Brannon.

The comment tracking number that has been assigned to your comment is OSTs2012D50314. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: May 4, 2012 03:08:53PM CDT

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2012 Draft EIS Comment: OSTs2012D50314

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## STATE OF COLORADO

John W. Hickenlooper, Governor

Mike King, Executive Director  
COLORADO DEPARTMENT OF NATURAL RESOURCES

Christopher E. Urbina, MD, MPH, Executive Director and Chief Medical Officer  
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



BLM Oil Shale and Tar Sands Resources Leasing Programmatic EIS  
Argonne National Laboratory  
9700 S. Class Avenue EVS/240  
Argonne, Illinois 60439

RE: Comments on Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming

The Colorado Department of Natural Resources (DNR) and the Colorado Department of Public Health and Environment (CDPHE) respectfully submit the following comments regarding the Department of the Interior, Bureau of Land Management's (BLM) intent to draft a Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming.

The prospect of a new PEIS raises important issues for Coloradans, and all Americans, with respect to energy supplies, environmental protection, socioeconomic impacts, and national security. If BLM were to authorize a commercial oil shale industry in Colorado, such a development would likely constitute the largest industrial development in the State's history with enormous implications for all of Northwest Colorado and for the State.

For Colorado, there is much at stake in the outcome of this program. Colorado recognizes the importance of oil shale resources to the country and, in our uncertain world, reliable, sustainable domestic oil-based resources are increasingly important. But equally important, from Colorado's perspective, is protection of the State's exceptional environment including our wildlife and water resources.

The State continues to believe that the research and development program authorized by BLM must be developed, tested, and monitored. Colorado is host to seven of the nine federal research and development sites and we are confident these programs will yield the necessary information upon which rules and regulations and commercial leasing can be based. Because oil shale development will likely utilize untested technology with potential long-term impacts to Colorado's communities and the environment, the State has consistently opposed plans to commercialize leasing or production of federal oil shale resources prior to a meaningful evaluation of the results of the research and development projects.

**For these reasons, DNR and CDPHE support the Preferred Alternative.**



### **Northwest Colorado**

Any future commercial leasing for oil shale would be in Northwest Colorado. Northwest Colorado is blessed with a remarkably diversified economy in which agriculture, tourism, recreation, hunting & fishing, natural gas & mineral development, retirement communities, and their economic drivers co-exist in a relatively balanced and supportive way. Within the Piceance Basin, Colorado is the beneficiary of some of the nation's most important wildlife resources, including robust elk populations and the largest migratory mule deer in North America. These wildlife treasures, the envy of other states, have gradually evolved and grown over the past century to the exceptional levels of today.

The Piceance Basin is home to the largest migratory mule deer herd in North America, a robust migratory elk population, one of only six greater sage-grouse populations in Colorado, populations of Colorado River cutthroat trout, and a host of other wildlife species. These wildlife resources have been built up over millennia and are of long-term statewide and national economic, ecological, and aesthetic importance. Colorado's future is reliant on these resources remaining strong and healthy.

Northwest Colorado is also the home to world-class hydrocarbon resources, holding trillions of cubic feet of clean-burning natural gas, which are currently undergoing an unprecedented gas development boom. As a result of its abundance of natural resources, Northwest Colorado is experiencing extraordinary growth in population and associated challenges. Housing affordability is a significant challenge to these local communities, and the capacity of local communities to absorb growth is already largely consumed. Much of the transportation infrastructure in these communities is in disrepair and is being severely stressed by growth pressures. The costs to repair infrastructure will require up-front financing, before revenues become available from traditional sources such as severance taxes, property taxes, sales taxes, and federal royalties.

This region is thus vitally important to Colorado's future. It is in a precarious balance in the face of extraordinary pressures precipitated by possibly the largest industrial development in the history of the state. Everything state and federal policy makers do with regard to Northwest Colorado must protect the resources, values, and diverse economies and interests found there, and we cannot simply think of this region as an area to be sacrificed for any one purpose. Yet another boom and bust cycle for energy development will be dire for Northwest Colorado, a region that retains considerable skepticism and frustration over the collapse of the oil shale boom of the 1970s. Another failed attempt at oil shale development could preclude development of this nationally significant resource for decades.

### **Areas of Concern**

#### Wildlife:

Given current information regarding extraction methodology, it is difficult to accurately depict impacts to wildlife populations in association with oil shale development.

The Piceance Basin contains unique and, in many cases, irreplaceable habitats for a host of wildlife species such as Greater sage-grouse, movement corridors for big game species, winter range for North America's largest migratory mule deer herd, a large and economically important



elk population, raptors, and waters containing native cutthroat trout and endangered fish. The primary concern for wildlife due to oil shale development is the overall loss and fragmentation of valuable wildlife habitat, the feasibility of reclamation of disturbed areas, and the damage that would accrue to wildlife populations. The PEIS should include baseline wildlife monitoring and specific conservation measures for deer, elk, sage- grouse, and Colorado River cutthroat trout.

The PEIS should allow for an accurate and complete assessment of the direct, indirect, and cumulative impacts to wildlife habitats and populations both on-site and off-site that will occur from commercial-scale oil shale projects. BLM's analysis should include the impacts to big game in the event they are forced to occupy alternate winter range habitats and the effects of oil shale development on water quality and quantity in critical habitat for threatened and endangered aquatic species.

The assessment should not only factor in the direct effects of oil shale development, but also consider wildlife impacts from existing and new coal extraction areas and power plants needed to supply power to the oil shale operations and associated development, including pipelines, power lines, roads, man camps and other infrastructure.

The economic impacts from any anticipated loss of wildlife, hunting and fishing opportunity, recreation and tourism on state agencies and local communities should be reviewed in depth. All wildlife issues previously identified in the March 20, 2008 State of Colorado comment letter submitted for the 2008 Oil Shale and Tar Sands Draft PEIS are still applicable and should be included in the updated PEIS.

#### Water Supply:

The State is rapidly approaching full allocation of its Colorado River entitlements. It is not clear how much water would be needed for oil shale development, which probably depends on the prevailing technology. Nevertheless, if oil shale were to consume vast quantities of water, there would be corresponding impacts to the State's agricultural, recreational, and other energy sectors on the West Slope, the Front Range and even along the Eastern Plains. Hence, the State is very concerned that the water implications of this industry be understood prior to decisions regarding commercialization.

According to the Colorado Statewide Water Supply Initiative, water demands from industrial, municipal uses, even with conservation, are expected to increase 55% to 83% from 2008 levels by 2050. This forecast does not include uses for oil shale such that the PEIS should assess water needs for oil shale in the context of the state's increasing water demands.

#### Water Quality:

There is tremendous uncertainty regarding the environmental impacts on both surface water and ground water quality due to commercial oil shale operations. The PEIS should include baseline ground and surface water quality monitoring and address the impacts of additional growth on water and wastewater infrastructure in nearby communities. The PEIS should also address potential impacts of water withdrawals on flows upstream of wastewater facilities, and the concomitant reduction in permit limits that might result for these facilities.



Air Quality:

The PEIS should include information about potential levels of Mercury, Ozone precursors, and Hazardous Air Pollutants occurring from oil shale development.

The PEIS should include an assessment of the air quality impacts from energy development for electricity generation that is needed for future commercial oil shale development. This assessment should include impacts to visibility and public health.

The PEIS should document the large amount of information about baseline air monitoring being conducted in Colorado. The BLM should commit to conducting the monitoring studies needed in the future to assess baseline air quality conditions. This would include, for example, monitoring in both the Piceance Basin and the Flat Tops Wilderness Area.

Health:

The PEIS should present sufficient data to assess potential degradation of the human environment and resulting health impacts to the affected public, potentially resulting from direct or indirect exposure to contaminated media.

Energy Needs:

According to BLM's analysis in the 2008 PEIS, a 100,000 barrel per day oil shale operation would require all of the electricity from a 1,200 megawatt power plant. The PEIS should include an analysis of options for meeting power demands for oil shale development in a manner consistent with Colorado's renewable energy standard. The PEIS should also provide for comprehensive planning of energy development on a basin-wide scale in order to adequately assess cumulative impacts.

Infrastructure:

Because the areas of the Green River Formation are relatively sparsely populated, boom and bust cycles associated with oil shale could have disastrous effects on the communities, stressing existing infrastructure with increased population and associated needs. The PEIS should assess the needs and impacts of an industrial complex significantly greater than the infrastructure that exists today.

The Report by BBC Consulting for the Associated Governments of Northwest Colorado notes that baseline population projections already strain most municipalities such that oil shale development will cause existing towns to reach capacity and new towns may have to be built. The report further concludes that growth related capital costs are forecasted to exceed energy revenues by approximately \$1.3 billion, some (but not all) of which may be covered by grant funds. The PEIS should include an assessment of how capital costs will be covered. It should include baseline data for community infrastructure capacity that can be used to assess what additional infrastructure will be required to support oil shale development. It should also include a thorough housing analysis incorporating local constraints including buildable land and infrastructure.



Cumulative Impacts:

The PEIS should include carrying capacity thresholds which have been in place for over two decades and impose objective standards to guard valuable and imperiled public resources from the cumulative impacts of oil shale development. As examples, the BLM should analyze data on the current populations of wintering mule deer and elk and update, if necessary, the number that must be supported for the benefit of the species. Likewise, the BLM should assess the likely socioeconomic impact of a significant new industry in the oil shale region, in conjunction with the current localized natural gas industry. The agency should also reevaluate the carrying capacities for air and water quality in order to assess whether they are currently adequate to protect these vitally important public resources.

Further, we reiterate that the State of Colorado is currently experiencing an unprecedented energy boom in many portions of our state. In particular, the areas that the BLM proposes to make available for application for commercial oil shale leases are experiencing rapid natural gas development. In addition, the areas the BLM proposes to make available for application for oil shale leasing are seeing increased tourism and recreation opportunities. Any oil shale leasing on top of this existing network of energy development and changing land uses must be evaluated in a cumulative fashion.

Thus, it is vitally important to the Departments and to the State of Colorado that the BLM proceeds cautiously and moves forward thoughtfully with the development of a commercial oil shale leasing program that truly looks at the cumulative impacts in a programmatic way. As the epicenter of the developable oil shale resource in the United States, Colorado has much to gain if this resource is developed responsibly, and much to lose if the risks are not assessed and managed appropriately.

**Proven RD&D**

Northwest Colorado is home to extraordinary oil shale resources, among the richest in the world, yielding 25 gallons of oil or more per ton of rock and estimated to hold nearly 500 billion barrels of recoverable oil shale, which is more than double the proven reserves of Saudi Arabia. Successful development of this resource could provide a substantial new source of domestic oil for the United States, which would have positive implications for our national energy policy and national security.

Given the significant oil shale resource and exigent national energy interests, Colorado is committed to seeing ongoing oil shale research and development move forward. Colorado officials have assisted BLM in reviewing applications for federal research and development leases, and the State currently hosts five of the six "first round" federal research and development leases issued in 2006 and two of the three additional "second round" research and development leases currently under BLM consideration. If successful, these research and development projects could set the foundation for a subsequent commercial oil shale industry. Because oil shale development will likely utilize untested technology with potential long-term impacts to Colorado's communities and the environment, the State has consistently opposed plans to commercialize leasing or production of federal oil shale resources prior to a meaningful evaluation of the results of the research and development projects.



**Conclusion**

Colorado recognizes that oil shale development may offer the potential to supplement the nation's energy supplies. Colorado's goal is that commercial oil shale development be done right – in a manner that avoids unacceptable and irreparable impacts on Colorado's land, air, water, wildlife resources, and communities and that minimizes those adverse environmental and socioeconomic impacts that would result from such development through front-end planning and financing and long-term monitoring and mitigation.

As BLM notes in the PEIS, the magnitude of the impacts cannot be quantified at this time because key information about the location of commercial projects, the technologies that may be employed, the project size or production level, development time lines, and mitigation that might be employed are not known.

Therefore, the State places great importance on a thoughtful, comprehensive PEIS, through which federal, state and local decision-makers will have the necessary tools in hand to evaluate what type of federal program makes the most sense. DNR and CDPHE remain convinced that BLM must gain critical answers to many questions before any commitment to commercial leasing occurs. BLM must similarly gain answers to such questions before any rules and regulations for commercial oil shale development can or should be finalized.

**mail\_ostseisarchives**

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**From:** ostseiswebmaster@anl.gov  
**Sent:** Wednesday, April 04, 2012 10:13 AM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50071  
**Attachments:** TSP\_Oil\_shale-tar\_sands\_4-4-12\_comments\_OSTs2012D50071.docx

Thank you for your comment, Jim DiLeo.

The comment tracking number that has been assigned to your comment is OSTs2012D50071. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 4, 2012 10:13:15AM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50071

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Attachment: C:\fakepath\TSP Oil shale-tar sands 4-4-12 comments.docx

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.



**Colorado Department Of Public Health & Environment  
Air Pollution Control Division  
Technical Services Program  
Modeling, Meteorology, and Emission Inventory Unit**

**Technical Memorandum**

To: Jim Dileo  
From: Kevin Briggs  
CC: Chuck Machovec, Daniel Bon, Dale Wells  
Date: April 4, 2012  
Subject: **Comments on :** Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming- January 2012

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In Volume 2, Chapters 4 and 5, page 4-52, lines 32-38, the Draft PEIS states that

“It is not possible to predict site-specific air quality impacts until actual oil shale projects are proposed and designed. Once such a proposal is presented, impacts on these resources would be further considered in project-specific NEPA evaluations and through consultations with the BLM prior to actual development. As additional NEPA analysis is done for leasing and site specific development, it may be necessary as part of the air quality analysis to conduct air quality modeling. The types of modeling that may be performed, when warranted, include near-field modeling, far-field modeling, and photo-chemical grid modeling.”

**Comment:**

As the RD&D projects are expanded from 160-acres to commercial leases, it is expected that local and cumulative air quality resources will be effected as stated throughout the documents. Prior to doing any NEPA analysis, an air quality modeling protocol needs to be submitted to reviewing agencies, including CDPHE, describing how near-field, far-field transport modeling and photochemical grid modeling will be performed for oil shale/tar sand development in order to reach an understanding of how the air quality impact analysis will be conducted.

In addition, given the uncertainty in actual oil shale projects that may be proposed, the magnitude of development and how those projects might be

designed, it is imperative that base line air quality be determined through a robust monitoring network prior to construction. The monitoring network should be constructed in a way to provide year-round characterization of existing air quality levels, improve the accuracy of modeling, and to improve the ability of CDPHE to issue air quality advisories to the general public if warranted by monitored conditions. It is recommended that BLM work with the State of Colorado to establish an air quality monitoring fund (or another method) to expand the existing air quality monitoring networks as deemed appropriate by CDPHE to gather meteorological and air quality data at micro, local, and regional scales for these projects. Funding levels should be sufficient to include AQRV/visibility monitoring at potentially affected mandatory federal Class I areas such as the Rocky Mountain National Park and the Flat Tops Wilderness Area. Funding should also be sufficient in order to provide and establish long term air quality monitoring throughout the project's lifetime. CDPHE also recommends that such a funding source be flexible enough to allow for future monitoring to include HAPS (such as carbonyl compounds), speciated VOCs (especially BTEX) and greenhouse gases (especially methane). Monitoring of these types of emissions are notably absent in the oil and gas development areas of western Colorado. It is recommended that the private sector proponents of oil and gas development fund the regulatory monitoring network enhancements.



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**From:** ostseiswebmaster@anl.gov  
**Sent:** Wednesday, April 04, 2012 10:15 AM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OST2012D50072  
**Attachments:** OG\_4-5-12\_Team\_Comments\_on\_Oil\_Shale\_PEIS\_OST2012D50072.docx

Thank you for your comment, Jim DiLeo.

The comment tracking number that has been assigned to your comment is OST2012D50072. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 4, 2012 10:14:55AM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OST2012D50072

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Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

**Comments on Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah and Wyoming**

General: There are very few conclusions reached in the PEIS and minimal technical data because of the speculative nature of this document. There are multiple references throughout the document to the effect that it is not possible to predict specific air quality impacts until actual oil shale projects are proposed and designed. Once a project is proposed, prior to a lease being approved a site-specific NEPA analysis must be submitted and approved. At this point, the Division's technical expertise will be best used.

Specific Comments:

**Chapter 3.5.2 Existing Emissions, lines 39-41 of page 3-105** states that, "... annual emission inventory data for criteria pollutants and volatile organic compounds (VOC) for 2002 for counties within and around the study are in Colorado..."

Comment: There has been significant oil and gas expansion in the Piceance region, where the Oil Shale exploration will take place, since 2002. As a result the emission inventory is outdated. A more recent data set should be obtained and used.

**Chapter 4.1.3 In Situ Retort Projects, lines 12-14 of page 4-12** states that, "100% of combustible gases recovered from the formation would be dewatered, filtered of suspended solids, and consumed on site as supplemental fuel in external combustion sources."

Comment: During an APCD inspection of the Shell Mahogany project, gases recovered from the formation were flared, not used as supplemental fuel. Suggested revision is to include possibility of flaring gases.

**Chapter 4.6.1 Common Impacts, lines 20-21 of page 4-53** states that, "Before oil shale development could occur, additional project-specific NEPA analyses would be performed, subject to public and agency review and comment."

Comment: Given the limited information provided in the PEIS, it's at this site- and project-specific level that the technical expertise of the O&G Team can be best used.

**Chapter 6.1.1.5 Air Quality (of Alternative 1), line 26 of page 6-11**

**Chapter 6.1.2.5 Air Quality (of Alternative 2), line 1 of page 6-73**

**Chapter 6.1.4.5 Air Quality (of Alternative 4), line 21 of page 6-176** all chapters state that, "If development of oil shale requires expansion of capacity of existing electric power plants..."

Comment: It is believed that the development of shale *will* require additional power capacity. Suggested revision is to strengthen this language to reflect that commercial development will more than likely require additional power capacity.

**Chapter 6.1.5.5 Air Quality, lines 30-35 of page 6-229** states that, "... impacts would be considered in project-specific NEPA analyses that would be conducted at the lease (including conversion from any RD&D to a commercial lease) and development phases of projects."

Comment: It is unclear if BLM expects companies to halt production and expansion of a project from the RD&D phase to the commercial production phase or if this analysis will take place while a facility is expanding. Suggested revision: please clarify what is expected of a company and when the public and agencies have an opportunity to analyze additional impacts.



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**From:** ostseiswebmaster@anl.gov  
**Sent:** Tuesday, April 24, 2012 11:46 AM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50119

Thank you for your comment, Roger Kuster.

The comment tracking number that has been assigned to your comment is OSTs2012D50119. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 24, 2012 11:46:15AM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50119

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**Comment Submitted:**

The Division of Environmental Health and Sustainability (previously the Consumer Protection Division) submits the following comments: Labor camp housing is only inspected on a complaint basis. The Labor Camp regulations are the authority used to address man camps. The Labor Camp regulations were adopted in 1968 and a revision may be needed to address issues relative to amn camps.

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

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**From:** ostseiswebmaster@anl.gov  
**Sent:** Tuesday, April 24, 2012 10:07 AM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50118

Thank you for your comment, Roger Kuster.

The comment tracking number that has been assigned to your comment is OSTs2012D50118. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 24, 2012 10:06:58AM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50118

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**Comment Submitted:**

The Water Quality Control Division (Division) of the Colorado Department of Public Health and Environment continues to be concerned that the Draft PEIS inadequately addresses the cumulative impacts of the development of the oil shale and tar sands on water quality in Colorado. Specifically, the Division is concerned with the socioeconomic impacts related to public water systems and wastewater systems with respect to increased populations that will occur with development of oil shale resources in Colorado. While the PEIS discusses water withdrawals that will occur from the extraction activities, it does not take into account the additional stress upon water and wastewater infrastructure in nearby communities from both population growth and potentially reduced surface water flows due to extraction activities. In order to address this issue, the Draft PEIS should incorporate the projected population growth due to the extractive industries in communities near the leases.

The water withdrawals discussed in the Draft PEIS do not take into account the effect that reduced instream water flow could have upon NPDES permits. For example, the PEIS does not address the potential impact to wastewater facilities from water withdrawals upstream of a wastewater facility and the concomitant reduction in NPDES permit limits that result.

In Section 3.4.1.2, the Draft PEIS focuses on salinity as the key parameter for potential water quality impairment in the Colorado River Basin. The Division agrees that salinity is a significant concern in the Colorado River Basin, but is concerned that the Draft PEIS does not significantly discuss the potential contribution of other contaminants to area waters from the proposed extraction activities. The Division is especially concerned about the potential of increased selenium loading to area waters from the proposed extraction activities.

In Section 3.4.1.3, the 303(d) list of impaired water bodies needs to be updated to the current 2012 303(d) List. The current 2012 303(d) List for Colorado can be found in the Water Quality Control Commission Regulation No. 93 ([http://www.cdphe.state.co.us/regulations/wqccregs/93\\_2012\(03\).pdf](http://www.cdphe.state.co.us/regulations/wqccregs/93_2012(03).pdf)).



In Section 4.5.1, the Draft PEIS indicates that runoff from surface disturbances related to oil shale operations would be non-point sources. In fact, disturbances of one acre or more during construction would require a point source stormwater permit. This error is repeated in section 4.5.1.1.

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

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**From:** ostseiswebmaster@anl.gov  
**Sent:** Monday, April 30, 2012 3:57 PM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50181  
**Attachments:** DPEIS\_OS&TS\_Comment\_Letter\_OSTs2012D50181.docx

Thank you for your comment, Duchesne County Commissioners.

The comment tracking number that has been assigned to your comment is OSTs2012D50181. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 30, 2012 03:56:57PM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50181

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Attachment: C:\fakepath\DPEIS OS&TS Comment Letter.docx

Comment Submitted:  
See attachment

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.



April 30, 2012

BLM Oil Shale & Tar Sands PEIS  
Argonne National Laboratory  
EVS Division, Building 240  
9700 South Cass Avenue  
Argonne, IL 60439

RE: Comments on Draft BLM Oil Shale & Tar Sands PEIS

Dear Reader:

Duchesne County, Utah, a cooperating agency in this environmental review process, has summarized its comments in Resolution #12-08, attached hereto and incorporated herein. Rural counties in Utah, Wyoming and Colorado containing these vast and important energy resources will not stand idly by while the Obama Administration continues to wage war on energy production in the West.

This so-called "fresh look" at lands available for oil shale and tar sands leasing is a colossal waste of the taxpayer's dollars, which practice has become all too frequent during the Obama Administration. The 2008 PEIS, which Duchesne County spent significant staff hours reviewing and commenting on, as a cooperating agency, was consistent with the Energy Policy Act of 2005, the state and local land use plans in the region (such as the Uintah Basin Utah Energy Zone designation) and the multiple use mandate of FLPMA. The draft 2012 PEIS violates all of these and makes no attempt to explain why greater consistency cannot be achieved. A copy of the Uintah Basin Utah Energy Zone Resolution #12-06, approved by Duchesne County, is attached hereto and incorporated herein by reference.

This DPEIS contains a flawed purpose and need statement based on the infamous Secretarial Order 3310, which Congress de-funded as stated in the Resolution enclosed. The DPEIS, given the substantial numbers of errors and omissions therein, shows an obvious attempt to rush this PEIS to approval before the end of the Obama Administration.

The BLM preferred Alternative, Alternative 2b, is not adequately analyzed in the DPEIS. Alternative 1 is the only alternative that can be legally justified.

The DPEIS fails to deliver the promised "fresh look" as it relies on basically the same data as the 2008 PEIS and fails to incorporate new data that has become available since 2008; especially the important data associated with new oil shale and tar sands technologies being employed on non-federal lands in the region. This failure to utilize the best available data constitutes a violation of the Federal Data Quality Act.

BLM DPEIS Oil Shale & Tar Sands

April 30, 2012

Page 2 of 13

Duchesne County, pursuant to our Cooperating Agency Memorandum of Understanding, Section V (E) hereby informs the BLM that we disagree on substantive elements of the DPEIS. These disagreements have not been resolved through the comment period to our satisfaction. We request, in accordance with the MOU, that the BLM describe the many substantial inconsistencies between its proposed action and the objectives of Duchesne County's land use plans and policies and include a summary of Duchesne County's views (as stated in this letter and in the enclosed Resolution) in the Final PEIS.

We have conducted a page-by-page review of the four-volume DPEIS and offer the following specific comments on the content of the document:

Page ES-1, Line 19 and Page 1-4, Line 7: If the BLM has decided to take a "fresh look" at the land allocations from the 2008 PEIS, why does the 2012 DPEIS fail to utilize new data that has become available since the 2008 effort? Some sample pages where BLM has failed to incorporate new data are: Pages 2-15, 3-28, 3-29, 3-34, 3-62, 3-83, 3-85, 3-246, 3-247, 3-262, 3-268 through 270, 3-272, 4-9, 4-198 through 199 and A-109 to name a few.

Page ES-5, Line 39: The lands identified as suitable for potential leasing under the 2008 PEIS are considered the most geologically prospective oil shale and tar sands areas. It makes absolutely no sense to remove 75% of these lands from potential leasing given the strides made in technology, as demonstrated on non-federal lands, since 2008.

Page ES-6, Footnote 3: It makes no sense to remove lands from consideration because they are within ACEC's that failed to warrant designation in BLM land use plans.

Page ES-9, Line 15: BLM has ignored the low water use technologies being employed by Red Leaf Resources (Oil Shale), Temple Mountain Energy (Tar Sands) and others despite requests by cooperating agencies that such new information must be incorporated in the DPEIS to debunk the water use myth promoted by radical environmental groups.

Page 1-8, Figure 1.2-1, Page 2-14, Figure 2.3-1: These figures were not updated to reflect the latest findings from the USGS 2011 Assessment of In-Place Oil Shale Resources.

Page 1-20, Line 31: Reference is made to a text box; but it is not clear that this text box appears on Page 1-2.

Page 1-21, Lines 32-41: The BLM has failed to cooperate with state and local governments to promote consistency with their land use plans. The State of Utah and many counties containing oil shale and tar sands resources have established an Energy Zone that provides for energy development as the priority land use. The BLM has made no attempt in the DPEIS to explain why its preferred alternative cannot be more consistent with such local plans.

Page 2-1, Line 18: BLM fails to recognize that oil shale has already proven to be an economically viable resource. It has most recently been proven by Enfit American Oil, which



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recently hosted Uintah County, Utah officials at their operations in Estonia. Enefit operates economically on a three-foot thick seam of oil shale. Imagine how economically they could operate on a 25-foot or greater thickness of oil shale in NE Utah, if given the chance! Commercial production has also occurred in Scotland (see Page 4-200).

Page 2-1, Line 32: This description of the alternatives is poorly worded and could lead the reader to assume that the No Action Alternative does not allocate any lands for potential leasing. The alternatives could better be described as the No Action Alternative and three *reduced* land allocation alternatives.

Page 2-15, Line 17: BLM has failed to recognize the plans for commercial oil shale development by TomCo Energy, a London-based energy company that plans to seek permits on SITLA lands. It's too bad that emerging companies are not able to access federal lands for their start-ups and must confine themselves to more progressive-minded state agencies and private land owners to prove the viability of their technology.

Page 2-16, Line 33...the BLM agreed to *propose* changes to the rule rather than *purpose* changes to the rule...

Page 2-35, Line 24: This paragraph demonstrates the lack of business sense by those currently in power in Washington D.C. No company is going to invest in costly oil shale technology on federal lands when such small acreages are made available under Alternative 2(b). It looks like the investments will continue on non-federal lands until the bureaucrats in Washington D.C. are replaced.

Page 2-35, Line 37: In this paragraph, the BLM admits that the preferred alternative, Alternative 2 (b), was "not noted elsewhere in the document but will be developed further in preparation of the Final PEIS. Duchesne County requests that the DPEIS be re-written and provided to us for at least a 30-day comment period after this alternative is more fully developed. It is impossible for cooperators and the general public to adequately comment on an alternative until it is fully developed in the draft PEIS.

Page 2-48, Line 8: Two periods at the end of the sentence. Page 2-48, Line 44: Delete the word "as" after the word "acreage."

Page 2-53, Tables 2.3.3-4 and 2.3.3-5, Page 2-75, Table 2.4.3-4, Page 2-76, Table 2.4.3-5: These tables need to be re-designed to help the reader understand them. For example, in Table 2.3.3-4, the column entitled "Acres LWC and Sage Grouse" needs to be moved to the right of the "Total" acreage column and then the data subtracted from that acreage to arrive at the acreage available for oil shale development after 75% of the lands with wilderness characteristics and sage grouse habitat are protected. Similar adjustments need to be made in the remaining tables.

Page 2-53, Line 14: This section is an analysis of Alternative 4. Why is Alternative 2 mentioned here?

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Page 2-66, Line 7: This section is an analysis of tar sands leasing under alternative 2. Replace “oil shale” with “tar sands” in this sentence.

Page 2-68, Figure 2.4.3-1: Along the Green River, in Uintah County, there is shown a “Colorado River Wildlife Management Area.” We have not heard of this area before and cannot find reference to it on the internet. Being located along the Green River, we suspect that this map designation may be in error.

Page 2-71, Line 8 and footnote 22: The paragraph beginning on Line 8 and the footnote are repetitious.

Page 2-73, Line 45: Delete the word “follow” at the end of the sentence.

Page 2-76, Lines 32-38: The alternative mentioned here should be one of the alternatives analyzed in the DPEIS. Duchesne County requests that the DPEIS be re-written to include this alternative and that the DPEIS be made available for another 90-day comment period after such amendments are made.

Page 2-80, Lines 39-41 and Lines 44-47: These sentences are poorly worded, repetitive and redundant.

Pages 2-83 to 2-109, Table 2.6-1: For Alternative 1, why does this table refer only to the White River and Book Cliffs RMPs when the Vernal RMP and perhaps others include oil shale development areas?

Page 2-95, Table 2.6-1, Wildlife: We doubt that there are “106,092 acres of raptor nests” under Alternative 1 and “103,719 acres of raptor nests” under Alternative 4.

Page 2-100, Table 2.6-1, Visual Resources: The column for Alternative 4 erroneously contains a reference to Alternative 2.

Page 2-101, Table 2.6-1, Cultural Resources: There is an acreage discrepancy (1.9 million acres vs. 2,017,714) in the Alternative 1 column.

Page 2-104, Table 2.6-1 and Page 2-127, Table 2.6-2, Socioeconomics: The positive socioeconomic impacts are understated and the negative impacts are overstated here and throughout the DPEIS.

Page 2-105, Table 2.6-1 and Page 2-128, Table 2.6-2, Environmental Justice: The positive impacts of energy development on minority and low-income populations are understated and the negative impacts are overstated here and elsewhere in the document.

Page 2-106, Table 2.6-1 and Page 2-128, Table 2.6-2, Environmental Justice: Assumptions are made that energy development will have negative effects on air and water quality and decrease



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water available for agricultural use by low-income or minority populations. These assumptions are based on the myths perpetuated by radical environmental groups and do not take into account the technologies being employed on private and state lands by companies such as Red Leaf Resources.

Pages 2-111 through 2-130, Table 2.6-2: The acreage associated with tar sands leasing under Alternative 1 should be 430,686 rather than 2,017,714. The acreage associated with tar sands leasing under Alternative 2 should be 91,045 rather than 461,965. The acreage associated with tar sands leasing under Alternative 4 should be 425,790 rather than 1,963,414. See Page 2-121. Also, in this Table, the reference under Alternative 1 containing lands only within the White River and Book Cliffs RMPs appears to be erroneous. Lands within the Vernal RMP and perhaps others should be included.

Page 2-117, Table 2.6-2, Noise: The indication that there would be 1.9 million acres identified for potential tar sands leasing under this alternative is false.

Page 2-118, Table 2.6-2, Noise, (cont.): Reference is erroneously made to Alternative 2 in the Alternative 4 column.

Page 2-121, Table 2.6-2, Wildlife: We doubt that there are "7 acres of raptor nests" under Alternative 1 and "5 acres of raptor nests" under Alternative 4.

Page 3-4 and Figure 3.1.1-1: Section 3.1.1.1 notes that the Glenwood Springs BLM Field Office is now called the Colorado River Valley Field Office. However, Figure 3.1.1-1 (and several other figures throughout the document) still refer to this field office as Glenwood Springs.

Page 3-28, Line 6: The figure of 2,800 active oil and gas wells in the Vernal Field Office is out of date (2005). Data from the *Greater Uinta Basin Cumulative Impacts Technical Support Document, August 2011*, states that there are 9,036 productive wells in the region. ([http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal\\_fo.Par.57849.File.dat/GCW%20Cums%20TSD%2003-22-12%20final.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal_fo.Par.57849.File.dat/GCW%20Cums%20TSD%2003-22-12%20final.pdf))

Page 3-29, Line 15-20: This information regarding wild and scenic rivers is out of date (2005) and inconsistent with the ROD for the Vernal FO RMP (see Figure 14a of the Approved RMP).

Page 3-37, Line 22: What authority does the Wyoming Environmental Council have to designate an area as very rare or uncommon?

Page 3-40, Lines 16-18: The assertion is made that ACEC's, WSA's, SMA's, national historic trails and lands with wilderness characteristics support higher levels of recreation use than most BLM administered areas. The opposite is true. These areas restrict public access and types of activities allowed to the point that they actually support lower levels of recreation use or prohibit recreation use by the majority of citizens.

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Page 3-44, Line 2: Erosion by wind is more likely due to the lack of natural vegetative cover than overgrazing.

Page 3-61, Line 25: Was this water data collected from 1906 **and** 1986 or from 1906 **to** 1986?

Page 3-62, Line 13-15: This section, if truly a “fresh look,” should be updated to include what the BOR’s Basin-wide Salinity Control Program has funded and accomplished since 2004.

Page 3-66, Section 3.4.1.4, Water Use: This entire section is flawed in that it fails to recognize modern oil shale technology being used by companies such as Red Leaf Resources, which use little to no water.

Page 3-78, Section 3.4.2.2, Surface Water Resources: This entire section is flawed in that it fails to recognize data available for the past six years; including 2011, which was a record water run-off year.

Page 3-83, Lines 38-44, Page 3-85, Lines 9-15: Again, old data (1941 to 1970) is being used when newer data is available and should be incorporated into the draft.

Pages 3-103 through 3-105: The climate change predictions on these pages are filled with contradictions; for example, there are dire predictions of both drought and increased precipitation attributed to climate change.

Pages 3-106 to 3-107, Table 3.5.2-1: The air emissions data in this table are from 2002. Newer data is available and should be incorporated into this table. Also, data from Duchesne County, Utah is not included in the table.

Page 3-120, Line 1: Duchesne County actually limits construction and mining activities to 7 AM to 9:30 PM on weekdays, 8 AM to 9:30 PM on Saturdays and 9 AM to 9:30 PM on Sundays and holidays.

Page 3-121, Line 38: A word is missing at the end of this sentence. The word could be “basin.”

Page 3-134, Line 3: ...are present within ~~in~~ the Green River Basin...

Page 3-197, Lines 31-32: One major threat to sage grouse populations (see Page 4-91) is West Nile Virus. This threat is left out in this section.

Page 3-238, Line 20: The 1989 Gulliford report is apparently flawed. If 700 new schools would be needed to support the oil shale industry in Garfield County, Colorado, with 3,000 teachers and staff, that calculates to about 4.3 teachers/staff members per school. Perhaps 70 new schools would be needed?



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Page 3-243, Table 3.11.2-1: It appears that the cities of Blanding, Duchesne and Naples, within the Utah ROI, have been omitted from this table.

Page 3-245, Table 3.11.2-4: This table contains a mixture of data from 2004, 2007 and 2009, which makes the title of the table misleading and makes it difficult to draw conclusions from the data. Data from 2004 should be updated to 2009 data, if available.

Page 3-246, Lines 1-32: The employment data used in this section is from 2004. Updated employment data should be available in Utah from the Department of Workforce Services.

Page 3-251, Line 4, Page 3-254, Line 22, Page 3-255, Table 3.11.2-8, Page 3-261, Line 44: Duchesne is misspelled.

Page 3-262, Table 3.11.2-11: Much of the data used in developing this table is 6-8 years old and should be updated.

Pages 3-268 and 3-269, Tables 3.11.2-15 and 3.11.2-16: Much of the data used in developing these tables is 6-8 years old and should be updated.

Page 3-270 and 271: The value of recreation resources is unlikely to be underestimated as many agencies have been known to inflate their visitation counts to justify the budget they wish to obtain. Also, a recent study by Utah State University [*The Economic Costs of Wilderness, June, 2011*] finds that wilderness areas actually have a negative impact on the local economy rather than a positive impact.

Page 3-272, Table 3.11.3-1: The 2004 data used in this table should be updated.

Page 3-273, Lines 31 and 36: Out-of-date data is used here as well.

Page 3-276, Line 37: 2010 Census data should be available for use in Table 3.12-1 rather than 2000 Census data.

Pages 4-8 through 4-11, Page 4-33, Section 4.5.1.2, Page 4-43, Table 4.5.2-1, Page 4-47, Line 27, Page 4-48, Section 4.5.2.2: Water usage estimates are high given today's technologies being pioneered by companies such as Red Leaf Resources, which use very little, if any water. Some data used here [see Page 4-9, Line 11], is from 1973, which is ancient history.

Page 4-10, Lines 34-40, Page 4-69, Section 4.7.1.6: Upgrading may not be as extensive as depicted here under today's technologies being pioneered by companies such as Red Leaf Resources.

Page 4-48, Lines 41-43: The 2010 Western Resource Advocates water report is widely viewed to be a biased, flawed document that perpetuates the myths associated with water use in oil shale and tar sands development. Reference to this flawed report should be deleted from the

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document. Instead, the document should be updated to reflect more accurate information from companies working in the industry.

Page 4-13, Section 4.1.5. Workforce/Housing: The BLM should contact companies actively involved in oil shale production (such as Enefit and Red Leaf) for updated estimates.

Page 4-13, 4-14, Section 4.1.6, Page 4-43, Table 4.5.2-1, Electricity needs: This section fails to account for today's technologies being pioneered by companies such as Red Leaf Resources, which use synthetic natural gas to produce the energy needed for the process. New power plants may not be necessary.

Page 4-16, Section 4.1.8: The BLM should contact companies actively involved in oil shale production (such as Enefit and Red Leaf) for updated estimates.

Page 4-21, Section 4.2.1.4, Recreation use: The document should address how much land would actually be taken out of recreation use under the various alternatives.

Page 4-57, Section 4.6.1.1.2, GHG Emissions: This section fails to recognize today's technologies being pioneered by companies such as Red Leaf Resources, who claim that GHG emissions are reduced by 2/3rds compared to previous technology.

Page 4-61, Section 4.6.2, Mitigation Measures: The BLM should communicate with companies such as Red Leaf Resources to determine how their new technologies reduce GHG emissions.

Pages 4-143 and 4-144, Figures 4.9.1-1 and 4.9.1-2: Why doesn't the BLM obtain photos from companies that are actually operating or proposing to operate in Colorado and Utah (Enefit, Red Leaf Resources, etc...) instead of photos from Australia?

Page 4-154, Line 39: Please clarify what is meant by "fall-line cuts."

Page 4-159: The four bullet points should be formatted with italics as was done on Page 4-162.

Page 4-180, Lines 14-20: In reality, the important recreational areas are adequately separated from the oil shale and tar sands areas so that both activities can function without adversely impacting the other. Also, while the tourism and recreational sectors of the economy are important, they do not produce the family wage jobs that the energy industry does.

Page 4-191, Section 4.14.1.2 and Page 4-194, Section 4.14.1.4: These sections need to be updated to recognize today's technologies being pioneered by companies such as Red Leaf Resources and Enefit.

Chapter 5, beginning on Page 5-1: This entire section should be updated to incorporate new technologies, such as those used by Temple Mountain Energy [see [www.templemountainenergy.com](http://www.templemountainenergy.com)].



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Page 5-34, Section 5.5.2, Water Use: The water usage here is vastly overstated given today's technologies being pioneered by companies such as Temple Mountain Energy, where they re-use 93% of their water.

Page 5-45, Lines 1-2: Did the BLM contact Temple Mountain Energy, operating in the Asphalt Ridge area of Utah, to verify that their technology is not commercially viable?

Page 5-65, Lines 1-7: Temple Mountain Energy claims that their spent tar sands are benign and can be sold as "clean, high-quality sand for applications such as hydraulic fracturing, glass making and other industrial uses." Did the BLM contact this company to verify that not all spent tar sands are a pollutant?

Page 5-109, Figures 5.9.1-1 and 5.9.1-2: Did the BLM attempt to obtain photos of local operations, such as Temple Mountain Energy on Asphalt Ridge, rather than rely on photos from Alberta, Canada?

Page 5-128, Line 24, Page 5-134, Line 16: If companies such as Temple Mountain Energy are able to recycle 93% of their water, the impacts on agriculture and low-moderate income populations here are vastly overstated.

Page 5-139, Lines 12-14: Contrary to this statement, spent tar sands do have value [see [www.templemountainenergy.com](http://www.templemountainenergy.com)] and are not necessarily to be treated as solid waste.

Page 6-2, Lines 15-17 and Lines 41-44, Page 6-10, Lines 28-32, Page 6-11, Lines 36-37, Page 6-12, Lines 26-28 and 40-41, Page 6-13, Lines 44-45, Page 6-17, Lines 23-24, Page 6-21, Lines 32-33, Page 6-48, Lines 39-41, Page 6-51, Lines 40-41, Page 6-56, Lines 36-37, Page 6-57, Lines 32-33, Page 6-65, Lines 28-29, Page 6-66, Lines 23-24, Page 6-242, Lines 13-22, Page 6-321, Lines 20-22, Page 6-325, Lines 16-17, Page 6-327, Lines 21-22, Page 6-329, Lines 30-31, Page 6-330, Lines 15-16, Page 6-331, Lines 5-6 and 19-20, Page 6-332, Lines 28-30, Page 6-334, Lines 36-37, Page 6-338, Lines 37-39, Page 6-349, Lines 34-35, Page 6-362, Line 14, Page 6-363, Lines 33-34, Page 6-365, Lines 19-20 and Page 6-366, Lines 14-15: If the BLM admits that there is no environmental impact associated with Alternative 1, then it makes absolutely no sense to have gone through this exercise and spent scarce taxpayer funds; except for the desires of the Obama Administration to pander to environmental groups rather than stand up for what is best for this country.

Page 6-7, Table 6.1.1-2: The acreage in the table does not match the acreage under Footnote c.

Page 6-53, Figure 6.1.1-7, Page 6-110, Figure 6.1.2-7, Page 6-160, Figure 6.1.3-6, Page 6-218, Figure 6.1.4-7, Page 6-355, Figure 6.2.1-6, Page 6-356, Figure 6.2.1-7, Page 6-395, Figure 6.2.2-6, Page 6-396, Figure 6.2.2-7 and Page 6-459, Figure 6.2.4-6: These maps are incorrect with respect to the location of designated wild and scenic rivers in the Vernal Field Office. Nine Mile Creek and the Middle Green River were not designated. Neither were the White River, Evacuation Creek and Bitter Creek (See Figure 14a of the Approved RMP). If certain

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alternatives would recognize these considered-but-not-designated streams; such should be noted in a footnote to the Figure.

Page 6-67, Section 6.1.2: There is no analysis in the document of the BLM preferred alternative 2(b). This analysis must be provided and re-published for review by the public and cooperating agencies before the process moves forward to a final PEIS.

Page 6-114, Section 6.1.2.11: The loss of jobs, revenue and positive economic impacts associated with Alternative 2 are drastically understated here.

Page 6-171, Section 6.1.4: Alternative 4, which is subject to acreage reductions associated with potential sage grouse core habitat and lands with wilderness character, is inconsistent with local plans and policies, including the Uintah Basin Utah Energy Zone designated by the 2012 Utah Legislature, Uintah County, Duchesne County and Daggett County.

Page 6-173, Line 27: Is the reference to Alternative 1 here really supposed to say Alternative 4?

Page 6-178, Line 20: correct typo "t49" perennial streams.

Page 6-312, Lines 5-9: This paragraph contains a mixture of references to oil shale and tar sands development when the section is supposed to be devoted only to a discussion of oil shale.

Page 7-1, Line 42 and Page J-5, Line 14: Duchesne County, Utah was left out of the list of local government cooperating agencies that submitted comments during the scoping period and before the release of the draft to the public. Why are the scoping comments and BLM's response to such comments not included at the end of Chapter 7?

Page A-9, Table A-1: This table utilizes 1967 data, which should be replaced by newer data from recent USGS estimates of the oil shale resource.

Page A-19, Section A.2.2: This section regarding Utah oil shale activity must be updated to include the activities of companies including Enefit American Oil, Red Leaf Resources and TomCo Energy.

Page A-21 through A-48, Section A.3: This technology overview is out of date as it fails to address new technologies being pioneered by companies including Enefit American Oil, Red Leaf Resources and TomCo Energy.

Pages A-109 through A-115, Sections 6 and 7: The data in these sections is 2005-2007 vintage and should be easy to update with current data.

Page A-118, Lines 24, 37 and 43 and Page A-119, Lines 3-4 and 18-19: The document recognizes that we are experiencing "declines in supply from existing major importers," that "Alaska North Slope production has been in decline," the "world demand for crude oil is



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expected to increase by 47% by 2030.” Because of these world supply issues, the document recognizes that “further international energy risk could provide additional incentive for utilization of domestic resources.” The document also recognizes that “Section 369 of the Energy Policy Act directs the Secretary of Defense to procure fuel derived from coal, shale oil and tar sands.” Based on these findings from the document, it makes absolutely no sense and is very short-sighted to select an alternative other than Alternative 1. Our national economy and our national security are at stake. Also, based on these findings, there is less likelihood of the boom and bust cycle occurring given the struggle of supply to keep up with demand.

Page B-4, Line 16: The document states that there are no commercial tar sands operations on public lands in Utah. Please check with the Utah State Institutional Trust Lands Administration to verify that this is correct. There is a company called Temple Mountain Energy that has been in operation on Asphalt Ridge, near Vernal, since 2006. We do not know if those lands are private or public.

Pages B-15 and B-16: Information regarding the Asphalt Ridge STSA is out-of-date. It does not include the operations of Temple Mountain Energy at this location from 2006 to the present.

Page B-17, Lines 5-7: This information from the Utah Division of Oil, Gas and Mining should be updated. This information also demonstrates that tar sands development is commercially viable and that companies are being forced to “move forward without the feds” because of the bureaucratic paralysis the federal government is mired in under the current administration.

Page B-19, Lines 24-34: This 1995 Speight report is outdated given today’s tar sands technology. Information from the Temple Mountain Energy web site (2011) debunks many of the myths contained in this 1995 report.

Page B-20, Table B-2: The water use data in this table is too high and is not based on today’s technologies. For example, Temple Mountain Energy states that they re-use 93% of their water, which will cut these water use figures dramatically.

Page B-31, Section B-5: This entire section is out of date as it does not take into account technologies being used by companies such as Temple Mountain Energy, at Asphalt Ridge.

Page B-58, Conclusions: These conclusions demonstrate that commercial tar sands development is economically viable; debunking the myths perpetuated by environmental groups.

Pages C-10, C-11, C-13, C-15, Table C-1: The statement under Alternative 4 on these pages that “All lands within the most geologically prospective oil shale area that are not excluded from commercial leasing under Alternative 2 will also be excluded under Alternative 4” does not make sense as Alternative 4 would allow more lands to be leased than Alternative 2.

Page D-9, Table D-5: Duchesne County, Utah has a Drinking Water Source Protection Ordinance in Title 4, Chapter 6 of its County Code.

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Page D-10, Table D-6: Duchesne County, Utah regulates hazardous materials in its Nuisance Ordinance, which is located in Title 3, Chapter 1 of the County Code.

Page D-12, Table D-8: Duchesne County, Utah requires a conditional use permit for mining activities only when located on private lands.

Page D-14, Table D-9: The correct reference to the Duchesne County Code for noise regulations is the Nuisance Ordinance, which is in Title 3, Chapter 1, Section 4(G) of the County Code.

Page D-15, Table D-10: The correct reference to the Duchesne County Code for weed regulations is Title 3, Chapter 5 of the County Code.

Page D-16, Table D-11: The correct reference to the Duchesne County Code for solid waste regulations is Title 3, Chapter 4 of the County Code.

Page D-17, Table D-12: The correct reference to the Duchesne County Code for source water protection regulations is Title 4, Chapter 6 of the County Code as well as the Duchesne County Drinking Water Source Protection Ordinance #09-273.

Page D-18, Table D-13: The correct reference to the Duchesne County Code for water bodies and wastewater is Title 3, Chapter 1 of the County Code.

Page F-18, Line 7: Requiring a 300 foot setback from a threatened or endangered plant to any surface disturbance associated with oil shale or tars sands development is far too great of a setback and could place substantial areas of land off-limits for production of these vital natural resources.

Pages G-3 through G-9, Socioeconomic analysis : The data in this entire section is out-of-date and needs to be updated with readily available data from state and federal agencies.

Appendix H: The interviews of community leaders and stakeholders should be updated given the developments that have occurred in the past 5 years since the interviews were done.

Page H-3, Lines 19-21: While the boom and bust cycle has occurred in the past, the facts of increasing demand and supply issues noted in Appendix A are likely to lessen the severity of such cycles.

In summary, this draft PEIS is not the “fresh look” that the BLM intended. It is filled with outdated information that could have been easily updated if the BLM weren’t trying to rush this process to a conclusion before the end of the Obama Administration. Rather than fight for the family wage jobs and associated income that so many American citizens desperately need; rather than fight for responsible energy development that contributes to local, state and national economic health and security; the BLM has backed down to litigious environmental groups.



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Again, the enclosed Resolution #12-08 summarizes our opposition to this process based on several points of law. The preferred alternative is inconsistent with state and local plans and policies, including the Uintah Basin Utah Energy Zone (see Resolution #12-06 enclosed). There has been no attempt, as required by FLPMA, to make the BLM Oil Shale and Tar Sands leasing effort as consistent with local plans as possible. If the Record of Decision adopts the BLM preferred alternative (2b), there will no doubt be legal ramifications.

Sincerely,

DUCHESNE COUNTY COMMISSIONERS

Michael A. Hyde, AICP  
Community Development Director

Enclosures

Resolution #12-06 – Uintah Basin Utah Energy Zone

Resolution #12-08 – Opposition to the BLM's 2012 OSTs DPEIS

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**From:** ostseiswebmaster@anl.gov  
**Sent:** Monday, April 30, 2012 4:15 PM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50184  
**Attachments:** img-430123521\_OSTs2012D50184.pdf

Thank you for your comment, Duchesne County Commissioners.

The comment tracking number that has been assigned to your comment is OSTs2012D50184. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 30, 2012 04:14:48PM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50184

First Name: Duchesne County  
Last Name: Commissioners  
Organization: Duchesne County, Utah  
Address: PO Box 317  
Address 2: 734 N Center Street  
City: Duchesne  
State: UT  
Zip: 84021  
Country: USA  
Email: [mhyde@duchesne.utah.gov](mailto:mhyde@duchesne.utah.gov)  
Attachment: C:\fakepath\img-430123521.pdf

Comment Submitted:  
See attached

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.



**RESOLUTION # 12-06**

**A RESOLUTION AMENDING THE PUBLIC LANDS SECTION OF THE DUCHESNE  
COUNTY GENERAL PLAN TO INCORPORATE THE UINTAH BASIN UTAH  
ENERGY ZONE**

**WHEREAS**, Duchesne County has a general plan adopted pursuant to Utah Code containing policies for the appropriate use of private and public land within the county; and

**WHEREAS**, Duchesne County desires to amend its general plan to incorporate provisions associated with the Uintah Basin Utah Energy Zone (Senate Bill 83) that was established by the Utah Legislature in the 2012 General Session; and

**WHEREAS**, the Duchesne County Public Land Use Committee has reviewed and recommended approval of these amendments as set forth herein; and

**WHEREAS**, the Duchesne County Planning Commission has conducted a public hearing to review the proposed plan amendment and concurs with the recommendation of the Public Land Use Committee that this Resolution should be passed;

**NOW, THEREFORE, THE DUCHESNE COUNTY GENERAL PLAN IS AMENDED BY INSERTING THE FOLLOWING AT THE END OF THE ENERGY AND MINERAL RESOURCES SUBSECTION OF THE PUBLIC LANDS SECTION OF THE GENERAL PLAN:**

**SECTION 1.** There is established, pursuant to Utah Code, the Uintah Basin Energy Zone in Duchesne County for the purpose of maximizing efficient and responsible development of energy and mineral resources. The land area and boundaries of the Uintah Basin Energy Zone in Duchesne County consist of federal lands within the Townships and Ranges described below and as depicted on the map attached hereto as Exhibit A, which is incorporated herein by reference:

**Uintah Special Base and Meridian:**

Township 3N, Range 1W; Township 3N, Range 2W; Township 3N, Range 3W; Township 3N, Range 4W; Township 2N, Range 1W; Township 2N, Range 2W; Township 2N, Range 3W; Township 2N, Range 4W; Township 2N, Range 5W; Township 2N, Range 6W; Township 1N, Range 6W; Township 1N, Range 7W; Township 1N, Range 8W; Township 1N, Range 9W; Township 5S, Range 8W; Township 5S, Range 9W; Township 6S, Range 3W; Township 6S, Range 4W; Township 6S, Range 5W; Township 6S, Range 6W; Township 6S, Range 7W; Township 6S, Range 8W; Township 6S, Range 9W; Township 7S, Range 4W; Township 7S, Range 5W; Township 7S, Range 6W; Township 7S, Range 7W; Township 7S, Range 8W; Township 7S, Range 9W.

**Salt Lake Meridian:**

Township 8S, Range 15E; Township 8S Range 16E; Township 8S, Range 17E; Township 9S, Range 15E; Township 9S, Range 16E; Township 9S, Range 17E; Township 10S, Range 14E, Township 10S, Range 15E; Township 10S, Range 16E; Township 10S, Range 17E; Township 11S, Range 10E; Township 11S, Range 11E; Township 11S, Range 12E; Township 11S, Range 13E; Township 11S, Range 14E; Township 11S, Range 15E; Township 11S, Range 16E; and Township 11S, Range 17E.

**SECTION 2.** The county finds that the lands comprising the Uintah Basin Energy Zone contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential.

**SECTION 3.** The highest management priority for all lands within the Uintah Basin Energy Zone is responsible management and development of existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States.



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General Plan Amendment  
Uintah Basin Energy Zone  
Page 2

**SECTION 4.** The county supports:

- (a) Efficient and responsible full development of all existing energy and mineral resources located within the Uintah Basin Energy Zone, including oil, oil shale, natural gas, oil sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources; and
- (b) A cooperative management approach among federal agencies, state, and local governments to achieve broadly supported management plans for the full development of all energy and mineral resources within the Uintah Basin Energy Zone.

**SECTION 5.** The county calls upon the federal agencies who administer lands within the Uintah Basin Energy Zone to:

- (a) Fully cooperate and coordinate with the county to develop, amend, and implement land and resource management plans and to implement management decisions that are consistent with the purposes, goals, and policies described in this section to the maximum extent allowed under federal law;
- (b) Expedite the processing, granting, and streamlining of mineral and energy leases and applications to drill, extract, and otherwise develop all existing energy and mineral resources located within the Uintah Basin Energy Zone, including oil, natural gas, oil shale, oil sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources;
- (c) Allow continued maintenance and increased development of roads, power lines, pipeline infrastructure, and other utilities necessary to achieve the goals, purposes, and policies described in this section;
- (d) Refrain from any planning decisions and management actions that will undermine, restrict, or diminish the goals, purposes, and policies for the Uintah Basin Energy Zone as stated in this Resolution; and
- (e) Refrain from implementing a policy that is contrary to the goals and purposes described within this Resolution.

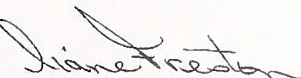
**SECTION 6.** The county calls upon Congress to establish an intergovernmental standing commission among federal, state, and local governments to guide and control planning decisions and management actions in the Uintah Basin Energy Zone in order to achieve and maintain the goals, purposes, and policies described in this Resolution.

**NOW, THEREFORE, THE DUCHESNE COUNTY GENERAL PLAN IS AMENDED BY INSERTING THE FOLLOWING POLICY AS SUBSECTION (h) AT THE END OF THE ENERGY AND MINERAL RESOURCES POLICIES IN THE PUBLIC LANDS SECTION OF THE GENERAL PLAN:**

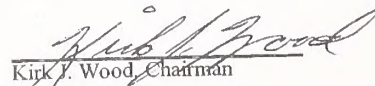
**(h) For private lands within the County, the County supports the provisions of the Surface Owner Protection Act, which was enacted by the 2012 Utah Legislature to establish surface owner rights and responsibilities when working with energy development companies.**

**DATED** this 16<sup>th</sup> day of April 2012.

**ATTEST:**

  
Diane Freston  
County Clerk/Auditor

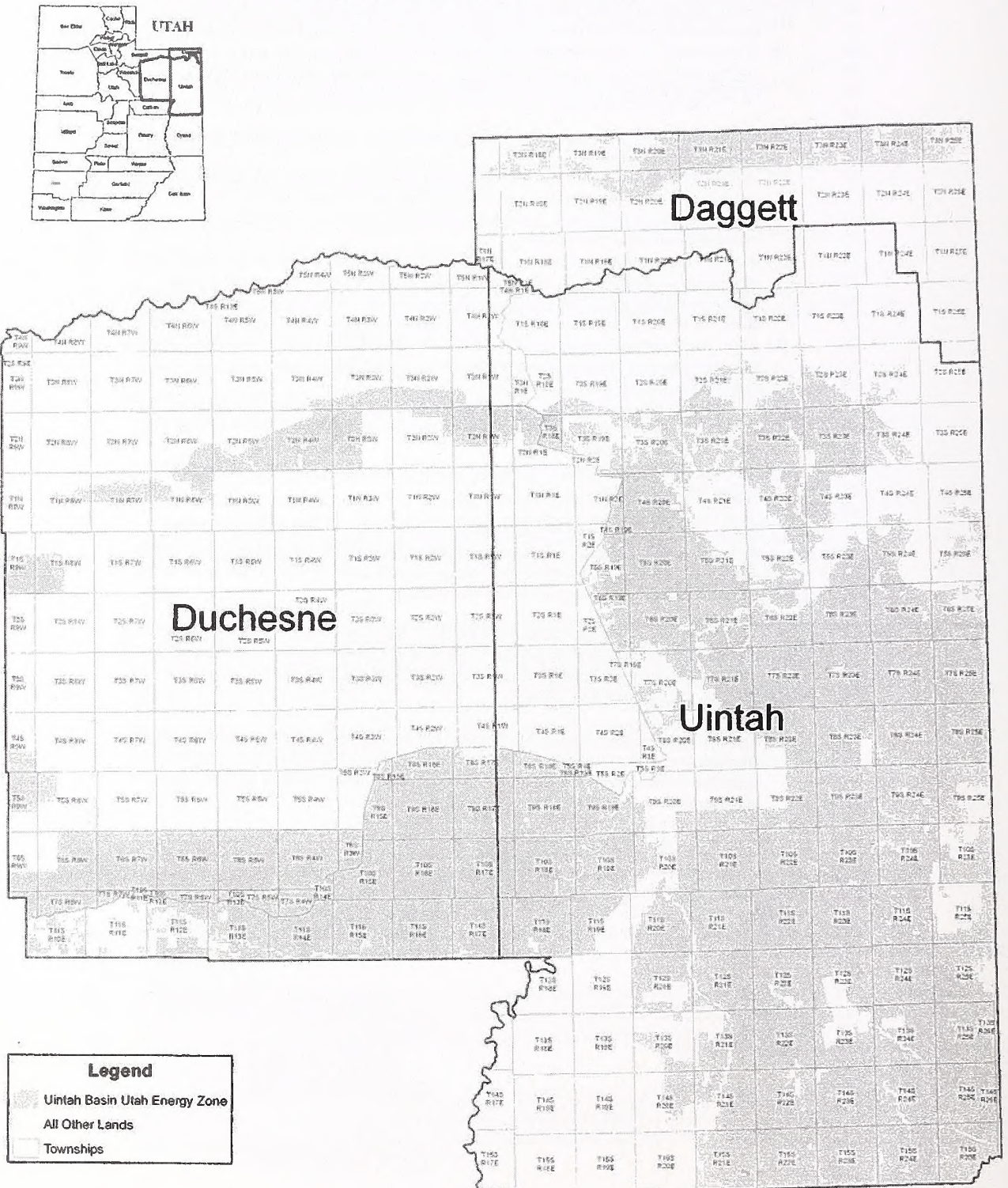
DUCHESNE COUNTY  
BOARD OF COMMISSIONERS

  
Kirk J. Wood, Chairman  
**ABSENT**  
Ronald Winterton, Member

  
Kent R. Peatross, Member



## EXHIBIT A RESOLUTION # 12-06



**mail\_ostseisarchives**

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**From:** ostseiswebmaster@anl.gov  
**Sent:** Monday, April 30, 2012 4:18 PM  
**To:** mail\_ostseisarchives; ostseiswebmaster@anl.gov  
**Subject:** Oil Shale and Tar Sands Comment OSTs2012D50186  
**Attachments:** img-430111832\_OSTs2012D50186.pdf

Thank you for your comment, Duchesne County Commissioners.

The comment tracking number that has been assigned to your comment is OSTs2012D50186. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 30, 2012 04:18:28PM CDT

Oil Shale and Tar Sands  
2012 Draft EIS Comment: OSTs2012D50186

First Name: Duchesne County  
Last Name: Commissioners  
Organization: Duchesne County, Utah  
Address: PO Box 317  
Address 2: 734 N Center Street  
City: Duchesne  
State: UT  
Zip: 84021  
Country: USA  
Email: [mhyde@duchesne.utah.gov](mailto:mhyde@duchesne.utah.gov)  
Attachment: C:\fakepath\img-430111832.pdf

Comment Submitted:  
See attached

Questions about submitting comments over the Web? Contact us at: [ostseiswebmaster@anl.gov](mailto:ostseiswebmaster@anl.gov) or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.



**RESOLUTION #12-08**  
**DUCHESNE COUNTY, STATE OF UTAH**

A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTs DPEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open public meeting after due opportunity for public comment, by the Board of Commissioners of Duchesne County, Utah in order to redress the many violations of law, regulation and policy by the BLM with respect to the BLM's 2012 OSTs DPEIS.

As background to this Resolution, Duchesne County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a Notice of Intent to prepare the above-referenced 2012 OSTs DPEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language above documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTs DPEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

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Duchesne County, Utah  
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WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per the requirements of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated by the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program, to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that the recoverable oil equivalent from oil shale and tar sands resources in Utah, Colorado and Wyoming exceeds 4 trillion barrels per the latest USGS scientific estimate; and

WHEREAS, the preferred alternative in the draft 2012 OSTs DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, the OSTs DPEIS fails to analyze BLM's preferred Alternative 2b, and the BLM admits as much on page 2-35 of the DPEIS; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force, the cooperating agencies, and the other stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities and local government coalitions which require the BLM to (1) publish the written input of cooperators who have unresolved disagreements over the substantive elements of the EIS document, and (2) describe the objectives of the cooperators' land use plans and policies; and

WHEREAS the 2012 OSTs DPEIS preferred alternative greatly restricts the already meager acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the 2012 OSTs DPEIS preferred alternative threatens to arbitrarily undermine all that was rationally and scientifically supported in the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs DPEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents of oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs DPEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs DPEIS preferred alternative bears no rational relationship to the stated purpose and need;



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Duchesne County, Utah  
April 16, 2012  
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WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale, pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs DPEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy Management Act (FLPMA); and

"WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources, but in stark contrast the 2012 OSTs DPEIS is plainly inconsistent with state and local plans and policies, plainly inconsistent with the Uintah Basin Energy Zone Legislation passed in the 2012 Utah Legislature (Senate Bill 83 – see Utah Code 63J-8-102 & 105.5), and it fails to adequately explain why consistency is not achievable; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible when market rates for oil are at least \$65.00 per barrel, which is well below current market rates; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible at \$65.00 per barrel, but it requires little or no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of family-wage jobs due to the Obama Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs DPEIS improperly limits technology testing to strictly in-situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs DPEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs DPEIS; and

WHEREAS, while the 2012 OSTs DPEIS repeatedly asserted the supposed need to take a "fresh look," the BLM arbitrarily failed to do so by refusing to update the document with fresh, new oil shale technological data made available since 2008 and fresh new oil shale technology that has emerged since 2008, which failures constitute a violation by the BLM of the Federal Data Quality Act;

**NOW THEREFORE, BE IT RESOLVED BY DUCHESNE COUNTY, UTAH AS FOLLOWS:**

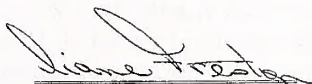
Resolution #12-08  
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April 16, 2012  
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1. Duchesne County declares the BLM's continuing to administer and carry out the 2012 OSTs DPEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Duchesne County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Duchesne County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;
4. Duchesne County finds that the only way the BLM could go forward with the 2012 OSTs DPEIS in light of the Congressional Spending Moratorium, would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. Duchesne County requests that the BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or about May 15, 2012.
6. Duchesne County requests that the BLM honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTs PEIS.

DATED this 16<sup>th</sup> day of April 2012.


ATTEST:

DUCHESNE COUNTY  
BOARD OF COMMISSIONERS

  
Diane Freston  
County Clerk/Auditor

  
Kirk J. Wood, Chairman

**ABSENT**  
Ronald Winterton, Member

  
Kent R. Peatross, Member





IN REPLY REFER TO:  
FWS/R6  
ES

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

#### Mountain-Prairie Region

MAILING ADDRESS:  
P.O. BOX 25486, DFC  
Denver, Colorado 80225-0486

STREET LOCATION:  
134 Union Boulevard  
Lakewood, Colorado 80228-1807



MAY 10 2012

#### Memorandum

To: Assistant Director, Minerals and Realty Management, Bureau of Land Management, Washington, D.C.

From: <sup>Deputy</sup> Regional Director, Region 6  
Denver, Colorado

Subject: Comments on the Draft Oil Shale and Tar Sands Resource Management Plan Amendments to address Land Use Allocation in Colorado, Utah, and Wyoming Programmatic Environmental Impact Statement

The U.S. Fish and Wildlife Service (Service) has reviewed the subject draft Programmatic Environmental Impact Statement (PEIS). These comments are submitted pursuant to our authorities under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.); Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.); Endangered Species Act of 1973, as amended (16 U.S.C. §§1531 to 1543 et seq.); Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §703 et seq.); Executive Order 13186 for the Conservation of Migratory Birds; and, the Bald and Golden Eagle Protection Act, as amended (16 U.S.C. §668 et seq.).

We appreciate the considerable task before the Bureau of Land Management (BLM) in achieving the requirements of Section 369 of the 2005 Energy Policy Act while also meeting the requirements of the NEPA. The subject draft PEIS analyzes the effects of amending 10 land use plans in Colorado, Utah, and Wyoming to describe those areas that will be open and those that will be closed to application for commercial leasing, exploration, and development of oil shale and tar sands resources.

The draft PEIS analyzes four alternatives in detail for allocation of oil shale leases (two of these include subalternatives) and four analogous alternatives for allocation of tar sands. The BLM has selected Alternative 2(b) as the Preferred Alternative for oil shale and Alternative 2 as the Preferred Alternative for tar sands. The Preferred Alternative would make something less than 830,000 acres available for future leasing applications for commercial oil shale, but only for research, development, and demonstration (RD&D) purposes. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 CFR Subpart 3926 for conversion to a commercial lease. The preference right

acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease. The Preferred Alternative also would make something less than 229,000 acres available for application for commercial tar sands leasing.

Our primary concern with the draft PEIS is the lack of information about the potential mining technologies to be employed, to the extent that identifying and mitigating cumulative impacts is extremely difficult. The BLM identified this problem in the draft PEIS "Because commercial oil shale development technologies are still largely in a research and development phase, many details regarding the specific technologies that would be used in the future to produce oil from oil shale are unknown" (p. 2-16). To remedy this concern, it is our understanding that once viable technologies are determined through the RD&D program, the BLM will conduct additional NEPA analyses to evaluate the large-scale cumulative effects of a leasing program, including specific areas to be leased and the conditions and stipulations under which leases will be sold. At the future leasing stage we believe there may be a need to consider additional programmatic NEPA review.

The Service supports BLM's selection of Alternative 2(b)/Alternative 2 as the Preferred Alternative. However, we believe more detailed information regarding direct, indirect, and cumulative impacts to water use and water quality in the Colorado River basin are needed to evaluate potentially substantial impacts on fish and wildlife resources. In addition, more details are needed about the type of heavy equipment, processing facilities, pipelines, storage tanks, industrial equipment, roads, and other infrastructure for fuel extraction and processing in order to adequately address the potential environmental implications.

We have provided General Comments in Attachment 1 and Specific Comments in Attachment 2 to assist the BLM in preparing the final PEIS. We appreciate the opportunity to provide comments. Please contact Michael Thabault, Assistant Regional Director – Ecological Services, at (303) 236-4210 if you have any questions or need further information.

Attachments



## ATTACHMENT 1

**General Comments on the BLM's Resource Management Plan Amendments and Draft PEIS for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (issued February 2012)**

After reevaluating the earlier (2008) PEIS, the BLM proposes to amend 10 land use plans to designate lands available for commercial leasing of oil shale and tar sands. The BLM's preferred alternative for oil shale allocation is 2(b). This alternative would allow commercial oil shale development on available lease parcels only after the applicant satisfies the requirements under the Research, Development and Demonstration (RD&D) Program. The BLM's preferred alternative for tar sands land allocation is alternative 2. Under alternative 2, commercial tar sands development can occur without the RD&D program requirement. The areas excluded for leasing both minerals are:

- All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands having wilderness characteristics;
- The whole of the Adobe Town "Very Rare or Uncommon" area, as designated by the Wyoming Environment Quality Council on April 10, 2008;
- Core or priority sage-grouse habitat, as defined by such guidance as the BLM or the DOI may issue;
- All Areas of Critical Environmental Concern (ACECs) located within the areas analyzed in the 2008 PEIS (76,666 acres in existing ACECs in the 2008 PEIS plus additional ACEC acreages as a result of Utah and Wyoming planning efforts recently completed); and
- All areas identified as excluded from commercial oil shale and tar sands leasing in Alternative C of the September 2008 PEIS.

USFWS understands that Section 369 requires the Department of the Interior to evaluate the effects of commercial leasing of BLM-administered lands in Colorado, Utah, and Wyoming, and we appreciate the stepwise fashion in which BLM has approached the development of a commercial leasing program. It is our understanding that once viable technologies are identified through the RD&D program, BLM will conduct additional NEPA analyses to evaluate the large-scale impacts of a leasing program, including specific areas offered for lease and the conditions and stipulations under which leases will be sold.

The draft PEIS strives to assess the broad implications of designating lands that could be made available for commercial leasing; however, that task is particularly difficult without knowing the viable mining technologies to be employed. More detail about the type of heavy equipment, processing facilities, pipelines, storage tanks, industrial equipment, roads, and other needed to extract these resources is necessary to appropriately evaluate impacts on wildlife resources.

Although the draft PEIS states that additional NEPA analysis will be required prior to commercial leasing, it is unclear at what level additional analysis will take place. USFWS believes further NEPA analysis at the programmatic level will be needed to address the cumulative effects of a defined leasing program. We are concerned that without a programmatic level of analysis once technologies are determined and better understood, large-scale leasing may



have significant impacts to certain listed and non-listed fish and wildlife resources. Cumulative effects resulting from incremental impacts on water quality, water quantity, air quality, traffic volume and other disturbance are some of the stressors that could affect populations of widely ranging species in the action area.

#### Sage Grouse

The preferred alternative (2b) in the oil shale/tar sands draft PEIS states that core or priority sage-grouse habitat would be excluded from leasing (Section 2.3.3.1; p. 2-34). However, the map of Colorado lands (Figure 2.3.3-4) that would be made available for oil shale lease applications under the preferred alternative appears to overlap areas that BLM has mapped<sup>1</sup> as sage-grouse priority habitat. We recommend that all priority sage-grouse habitat be excluded from application for oil shale and tar sands leasing and that apparent inconsistencies in maps be resolved.

#### Bald and Golden Eagle

Information concerning eagles in Chapter 3, Affected Environment, should be revised and updated to reflect the USFWS' new regulations for take of bald and golden eagles and their nests under 50 CFR §§ 22.26 and 2.27, as summarized below.

Activities that take eagles or eagle nests may violate the Bald and Golden Eagle Protection Act (BGEPA). That Act defines the "take" of an eagle to include a broad range of actions, including to: "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb." In 2009, USFWS issued regulations (50CFR 22.3) that define "disturb" as:

*to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.*

Many of the field activities associated with oil shale and tar sands mining and processing have the potential to impact eagles, and protective measures necessary to comply with BGEPA will need to be considered.

On a limited basis, USFWS has the ability to authorize the take of eagles when: thresholds for take in the eagle population have not yet been reached and take is compatible with stable or increasing breeding population; comprehensive measures to avoid and reduce take are developed in coordination with USFWS, and; any subsequent take is unavoidable. Permits will authorize limited, non-purposeful take of bald and golden eagles; authorizing individuals, companies, government agencies (including Tribal governments), and other organizations to disturb or otherwise take eagles in the course of conducting otherwise lawful activities. Removal of eagle nests would usually only be allowed when it is necessary to protect human safety or the safety of the eagles. Permits issued by USFWS may require pre- or post-project surveys, and may require that conservation measures be implemented to offset unavoidable take.

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<sup>1</sup> [http://www.blm.gov/co/st/en/BLM\\_Programs/wildlife/sage-grouse.print.html](http://www.blm.gov/co/st/en/BLM_Programs/wildlife/sage-grouse.print.html)



ESA Interagency Consultation

USFWS commends BLM for including a discussion within the draft PEIS of threatened and endangered species and critical habitat that are likely to be encountered by future oil shale and tar sands development projects. We also recognize the efforts of BLM to coordinate with USFWS in the development of measures to support the conservation of federally listed threatened and endangered species presented in Appendix F. However, USFWS remains concerned about the lack of information available on mining technologies and the potential for cumulative impacts to federally listed species.

With particular regard to the potential need for water and the impacts on water quality, the unknown effects of area-wide oil shale and tar sands development could threaten listed species within the Colorado River Basin. We encourage BLM to further develop and incorporate conservation measures for listed species in the final PEIS and into future NEPA documents associated with specific leasing and development actions. NEPA analyses should include specific conservation guidelines for special-status species that will be applied to site-specific NEPA, consultation, and implementation documents of all future proposed projects. We recommend that you contact our Field Offices for assistance in developing those guidelines. Including guidelines at this level of NEPA review would set standards to direct the future planning and implementation of oil shale projects and ensure that special-status species are considered in future site-specific projects within the PEIS study area.

BLM is proposing to conduct Section 7 consultations when developing supplemental Environmental Assessments associated with future lease sales and projects. We have concerns that a fragmented consultation process will preclude the ability to conduct a cumulative effects analysis, not only for oil shale and tar sands development but also for other land development in the action area. Therefore, we recommend that a landscape level evaluation be used once viable technologies and program details are identified. Species that should have landscape level plans based on land use and future oil shale tar sand development include the four endangered fish of the Colorado River and tributaries, black-footed ferret, white-tailed prairie dog, and the greater sage-grouse. Early consultation considering a landscape-scale view can identify concerns early in the planning process and help identify strategies to assist in recovery of listed species.

**ATTACHMENT 2**  
**Specific Comments on the BLM's Draft Resource Management Plan Amendments and Draft PEIS**  
**for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming**  
**(issued February 2012)**

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
1	Table 2.6.1	2-98	For Alternative 2 the PEIS states "no critical habitat will be impacted under this alternative." We do not agree with this statement because water depletions from the upper Colorado River Basin, as well as adverse changes to stream water quality, would have an adverse impact to critical habitat for the four endangered Colorado River Basin fish species. We recommend this statement of impacts be changed to indicate possible downstream impacts on critical habitat for listed fish.
2	Table 2.6.1	2-123	It appears that information in the Table for Alternative 2 is incorrect. We recommend the BLM delete the reference to 471 acres designated as critical to the Mexican spotted owl from consideration for commercial tar sands leases under Alternative 2.
3	3.7.3 and elsewhere		We do not believe wild horse and burros should be included as "wildlife" in the PEIS. BLM manages these animals under separate legislation and programs from their wildlife management program. For purposes of the PEIS, feral horse and burro information, discussions, and analyses should be separate from that of "wildlife." This would apply to Chapters 3, 4, 5 and 6.
4	Chapter 3, Section 3.7.3	3-158, 1	It is unclear whether the statement here refers to BLM's wildlife management objectives. If so, please qualify the statement by explaining that in general the goals and objectives of wildlife management are broader than those stated here.
5	Chapter 3, Section 3.7.3	3-158, 7-9	If the text is supposed to be a statement about the U.S. Fish and Wildlife Service's (USFWS) roles and responsibilities relative to wildlife management then the statement is inaccurate and fails to fully describe this for USFWS. However, if the statement is supposed to reflect USFWS' role in wildlife management relative to BLM lands then the statement should be revised to properly qualify it.
6	Chapter 3, Section 3.7.3.2	3-160, 14-15	"The following discussion describes important groups of birds..." This statement and the accompanying text infer an undefined 'value' on bird groups. Although some groups of migratory birds have greater value to humans than others, the BLM has a responsibility to comply with the Migratory Bird Treaty Act (MBTA) (and BLM's MOU pursuant to E.O. 13186) to conserve migratory birds regardless of whether these species are "valued" by humans.
7	Chapter 3, Section 3.7.3.2	3-159-3-162	Headers used for Section 3.7.3.2 Birds: The headers that are used do not address many bird species present in the PEIS study area. We suggest an alternate approach--to discuss each bird order that occurs in the PEIS area under a separate subheader.



Comment #	EIS Section	Page/Line	Comment/Suggested Revision
8	Chapter 3, Section 3.7.3.2	3-161-3-162	The PEIS subsection for Neotropical Migrants is inaccurate since all of the birds listed on lines 41-46 on page 3-161 and lines 1-2 on page 3-162 are passerines, whereas the term 'neotropical migrant' refers to about 386 bird species from 18 bird orders (see <a href="http://www.fws.gov/birdhabitat/Grants/NMBCA/BirdList.shtm">http://www.fws.gov/birdhabitat/Grants/NMBCA/BirdList.shtm</a> ) not just passerine species.
9	Table 3.7.3-2 Figure 3.7.3-2	3-167, 168	The organizational format, with a table and figure for wild horses within the "Threatened, Endangered, and Sensitive species" subsection, is inappropriate. We recommend that Table and Figure be moved.
10	Chapter 3, Section 3.7.4.5	3-201, 19-33	We recommend the discussion on the bald eagle also include language describing the prohibition of take under the Bald and Golden eagle Protection Act (BGEPA) and USFWS regulations.
11	4.1.2, 4.5.1.3 Waste Water	4-9, 4-37	The PEIS states that retorts produce 2 to 10 gallons of wastewater per ton of processed shale, which contains various organic and inorganic components that may need treatment depending on final use. Please quantify how much wastewater is likely to be produced overall, and how that water will be stored, treated and/or disposed.
12	4.5.1 Water Resources	4-31 to 4-37	<p>USFWS shares all the concerns of water quality impacts identified on pages 4-31 and 4-32 in Section 4.5. USFWS has particular concern for designated critical habitat for the Colorado pikeminnow, razorback sucker, bonytail, and humpback chub in the White and Green Rivers, plus their associated tributaries (e.g., Piceance and Yellow Creeks). The PEIS should clarify that water depletions would decrease the assimilative capacity of the receiving streams for any discharges associated with oil shale and tar sands development, and incorporating the following information:</p> <p>Many kinds of contaminants enter into the upper basin rivers – e.g., mercury from airborne power plant emissions, selenium entering the river via groundwater irrigation return, hydrocarbons running off of oil and gas development sites, pesticides from agricultural areas.</p> <p>In addition, this section should include more discussion on the possible contaminants that may come off of runoff from oil shale and tar sands operations, including selenium, which is of particular concern for endangered fishes. Water depletions and replacement with lower quality waters are of particular concern in feeder streams and backwater areas with limited flushing (Woodward et al. 1985). In sum, water depletions alone can lead to increased concentrations of existing contaminants; that is, water quality is tied to water quantity. If there is less water to dilute these contaminant loads in western rivers, the effect on all aquatic organisms, endangered fish included, is magnified.</p>

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
13	<p data-bbox="567 1570 597 1647">4.5.1.3</p> <p data-bbox="627 1526 657 1692">Contaminants</p>	4-37 to 4-39	<p data-bbox="249 254 332 1305">Oil shale and tar sands development may cause significant effects to threatened and endangered species, migratory birds and other wildlife species, as well as, ground and surface waters (Bartis et al. 2005).</p> <p data-bbox="370 210 529 1305">Uncontrolled development associated with the oil shale industry in northeastern Estonia has resulted in significant ecological damage (Tuvikene et al. 1999). Runoff from oil shale mines, oil shale ash piles, and associated power plants have resulted in oil shale leachate polluting rivers and lakes (Truu 2004, Tuvikene et al. 1999). Pollution resulting from the leaching of oil shale deposits has also been documented in the United States (Amy et al. 1980, Strollenwerk and Runnells 1981).</p> <p data-bbox="567 210 710 1305">There are interrelated and interdependent effects from infrastructure associated with oil shale and tar sands development including new roads, new reservoirs, new powerplants, pipelines, and powerlines. In future correspondence and ESA interagency consultation, the USFWS will request a more detailed analysis of all effects of the proposed action on federally-listed threatened and endangered species, migratory birds, and wetlands.</p> <p data-bbox="748 221 831 1305">We recommend the BLM require ground and surface water quality data for each future project be measured and made available online. Waste water and leachate concentrations should be compared to established NPDES standards.</p> <p data-bbox="869 265 990 1305">For contaminants where no NPDES levels have yet been set, we recommend that a Biological Technical Advisory Group (BTAG) be organized with EPA, BLM, and the USFWS to identify which contaminants should be monitored and what concentration levels would trigger enhanced mitigation to protect fish, wildlife, and plants.</p>



Comment #	EIS Section	Page/Line	Comment/Suggested Revision
14	4.5.2 Water Budget	4-41	<p>All of the alternatives would require extensive water resources. The upper Colorado River basin is a heavily-developed, desert river system. If any future project (or series of projects) that requires large quantities of water from the upper basin rivers is authorized, meeting stream flow needs of endangered fishes will be difficult.</p> <p>Critical habitat has been designated for endangered fish species along segments of various large rivers in the upper Colorado River Basin, including the Green and White Rivers. Most of these rivers have established flow recommendations for endangered fish. (Flow recommendations for the White River are currently under development.) However, even when flow recommendations exist, this does not guarantee the flow recommendation will be met. As an example, in the San Juan River there is only one major dam being regulated by one agency and base flows are supposedly being protected by an established set of flow recommendations. Despite this, there have been years when the prescribed base flows were not met. This was the case in 2002, when the recommended minimum base flows of 500 CFS were not being met in the river channel downstream of Farmington, NM. In fact, flows were less than 250 CFS for long periods of time in almost 150 miles of river. This had highly detrimental effects on the native fish community, concentrating both contaminants and nonnative fish into the same small pool habitats with the native fish. While most larger sub-adult and adult native fish were able to weather that low-flow summer, almost an entire year-class of newly-spawned native fishes (e.g., razorback sucker, Colorado pikeminnow, flannelmouth sucker, and bluehead sucker) were lost to predation by birds and nonnative fishes, high water temperatures (leading to temperature-related stress and “ich” {<i>Ichthyophthirius multifiliis</i>} infections), and other associated stressors. The cumulative effect of large water depletion projects on flows for endangered fish and critical habitat should be thoroughly considered and disclosed to the public and other agencies in your analysis.</p>

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
15	Secs 4.5.2.1 and 4.5.2.2  Water Budget for Colorado and Utah	4-46-48	<p>Upwards of 8,000 acre-feet of water could be required per project (less for underground projects). Therefore, each project could be approaching 4.5 percent of the "available" water by 2050. We recommend that an analysis of how this might affect endangered fishes be included in the PEIS, and we provide the following information for your consideration:</p> <p>The White River, in particular, is at risk from oil shale related water depletions and potential contamination. Flow recommendations are currently being developed by the Upper Colorado River Endangered Fishes Recovery Program (Schmidt and Orchard 2002, Irving et al. 2002). Once the flow recommendations are finalized, a Programmatic Biological Opinion will be developed for the White River. We recommend that BLM review the draft flow recommendations and determine the effects of oil shale development on flows in the White River.</p> <p>The White River has a relatively intact and healthy native fish community. Both the Utah Division of Wildlife Resources (UDWR) and the USFWS have documented that both endangered Colorado pikeminnow and the native three species (flannelmouth sucker, bluehead sucker, and roundtail chub) of fishes are present in promising numbers in the White River. During the recent period, the number of the endangered razorback sucker in the White River has increased, almost certainly due to augmentation of hatchery-raised fish. In 2011, razorback sucker larvae were collected in the White River for the first time, indicating that natural spawning likely occurred.</p> <p>The White River has relatively low numbers of nonnative fish species, which compete with native endangered fish. Low, steady river flows that occur year-round and which lack high spring flow runoff tend to favor survival and proliferation of introduced, nonnative fishes over native fish species. Thus, any water development individually or cumulatively in the White River basin (or any upper basin river), has the potential to modify the flow regime to favor introduced, nonnative fishes. The PEIS provides no real cumulative quantification or rigorous landscape level analyses of change given the overall developable acreage.</p>
16	4.8 Impacts to Ecological Resources	Tables 4.8.1	<p>Terms for impacts that are used in the PEIS such as "Large"/"Small" give no indication of how the impact was analyzed or the scale or scope of those impacts. It appears throughout the document that this was a judgment call. We recommend the PEIS provide more detail regarding the science, qualification, and scale of these impacts.</p>



Comment #	EIS Section	Page/Line	Comment/Suggested Revision
17	4.8.1.3 Wildlife and Migratory Birds	4-85	Please modify the wording because migratory birds do not always “fly over” mine sites. Whereas, water in contaminated leachate pools often attract them to mine sites, especially during migration. The PEIS does not adequately address the potential use of wastewater impoundments or evaporation ponds for wastewater disposal or identify measures to prevent migratory bird mortality in these facilities. Large tailings ponds are used in the tar sands development sites of Alberta. Those extensive impoundments have resulted in the loss of large numbers of birds.
18	Chapter 4, Section 4.8.13.4	4-91, 30-33	The PEIS states no raptors would be electrocuted because the spacing of the infrastructure would exceed that of the largest raptors in the study area. Without further definition of what the spacing would be this statement may be inaccurate. If the standard BLM intends to apply to any electric power lines constructed in conjunction with oil shale/tar sands development are those of the APLIC 2006 Suggested Practices manual then please be aware these standards will not eliminate raptor electrocutions. The current APLIC standards are based on “dry feather” conditions. That is the spacing recommendations from APLIC would prevent electrocutions only if the bird feathers are dry. If they are wet then the spacing requirements to fully prevent bird electrocutions would be greater. The APLIC 2006 Suggested Practices manual discusses this point directly.
19	4.8.2 (and 1.4.6) Greater sage-grouse Mitigation Measures	4-124 to 4-126	We recommend that the PEIS incorporate information related to the new effort by BLM to protect the greater sage-grouse through range-wide resource management plan amendments, including the relatively new delineation of priority and general habitat for sage-grouse (at least in Colorado). We also recommend incorporating the noise restrictions as set forth in the relatively new Disturbance Density Calculation Tool that is used for projects located in core or priority habitat areas.
20	4.8.2.3 Wildlife and Migratory Birds	4-129	We recommend a more detailed discussion be provided outlining the potential for migratory birds to be attracted to watery, yet contaminated, pits created for a project. Fencing and netting to prevent bird use may reduce potential impacts. Radar, noise makers, and regular effectiveness monitoring is also encouraged.
21	Chapter 5, Section 5.8.1.3.9	5-84, 45-46	We disagree with the statement in this section regarding raptor response to fire (burned habitat). Rangeland systems with repeated fire (i.e. cheat grass fire cycles) are over time converted to annual grasslands with negative consequences for raptor populations. Ongoing work in Utah (with involvement from UDWR and the USFWS) is demonstrating this quantitatively for golden eagle populations. This is likely true for many other raptors that inhabit rangeland systems but corresponding investigations to demonstrate this have not yet been undertaken.
22	Table 6.1.1-8 Table 6.1.2-2	6-38 6-97	Correction needed: The western yellow-billed cuckoo could be found in appropriate habitats in Colorado in Rio Blanco and Garfield Counties.



Comment #	EIS Section	Page/Line	Comment/Suggested Revision
23	Table 6.1.1-8	6-47	Correction needed: The Mexican spotted owl could be found in appropriate habitats in Colorado in Rio Blanco and Garfield Counties.
24	6.1.2.7.4 Fig. 6.1.2-5 Greater sage-grouse Habitat	6-80 6-108	“Under this alternative [2], oil shale development would be excluded from core or priority habitats for the greater sage-grouse...” This statement and section, and associated maps, should be updated with the new Colorado Parks and Wildlife greater sage-grouse priority habitat map that was issued March 13, 2012 ( <a href="http://www.blm.gov/co/st/en/BLM_Programs/wildlife/sage-grouse.html">http://www.blm.gov/co/st/en/BLM_Programs/wildlife/sage-grouse.html</a> ). This may result in some areas being removed from the preferred alternative that occur within priority habitat (e.g., scattered parcels in the southern portion of the potential lease area in Colorado). It seems inappropriate to have the figure for wild herd management included here.
25	Figure 6.1.2-3	6-81	The location of this table and figure seems misplaced; they should be relocated to the section that refers to them. (This table and figure should be located where Figure 6.1.2.3 is.)
26	Table 6.1.2-3 Figure 6.1.2-4 Figure 6.1.2-5	6-104 to 108	The assumptions presented here are based on data that are fairly old. We recommend that the information be updated. Most companies in the region are developing surface locations with multi-well pads (UDOGM, 2012). Many existing 40-acre surface locations in Utah have multiple wells; in Colorado, most well pads have multiple wells. This is good since it restricts the amount of 20-acre surface developments; however, pad sizes have increased. Reclamation has not occurred at the levels anticipated with the continued expansion to add more wells to existing facilities.
27	Sec. 6.2.6.1.1 Assumptions	6-481	Please clarify that phosphate and other mineral mining have the potential to become cumulative contaminant point sources for leachate contaminants (i.e., selenium and arsenic) along with Tar Sands development. In a large landscape such as the Colorado River basin, or the Diamond Mine area, each of these cumulative contaminant inputs have the potential to become highly significant over time and space with impacts to aquatic resources, Colorado River Basin fishes, and migratory birds.
29	6.2.6.2.4 Major Activities in Tar Sands Areas	Table 6.2.6-4	The PEIS states that all post-lease activities will be required to comply with ESA, BGEPA, and MBTA. However, compliance with the MBTA is challenging. Oil shale and tar sands resources development is likely to result in the take of MBTA species and there is currently no mechanism for USFWS to permit the unintentional (incidental) take of migratory birds associated with these actions. The PDEIS should encourage the applicants to communicate with the USFWS to address and minimize the potential for unintentional take of migratory birds.
30	F.1		



Comment #	EIS Section	Page/Line	Comment/Suggested Revision
31	F.1		<p>Text of the opening paragraph on page F-3 refers only to listed species. The text should be corrected to indicate that the appendix addresses conservation measures for eagles covered under the BGEPA, and birds covered under the MBTA, in addition to threatened and endangered species.</p> <p>We suggest that the intent of the introductory paragraph of Appendix F is to provide measures to address each statute. If so, we suggest the use of separate headers for ESA, BGEPA, and MBTA species and discuss conservation measures for each group of species covered under each of these Federal wildlife statutes.</p>
32		F-8	<p>For item 6 on page F-8, the APLIC manual for avoiding bird collisions with power lines should also be cited -- <i>Avian Power Line Interaction Committee (APLIC). 1994. Mitigating bird collisions with power lines: the state of the art in 1994. Washington, DC: Edison Electric Institute; 78 p --</i> along with a recommendation to follow all measures in the manual that apply. (A revised version of the APLIC manual is due to be issued in 2012.)</p>
33	F.2.8	F-17	<p>We recommend surveys for the Dudley Bluffs bladderpod and twinpod extend up to 600 meters (roughly 2,000 feet) from project activities within suitable habitat.</p>
34	F.3.1	F-19	<p>Please incorporate greater sage-grouse as a priority and include general habitat maps for sage-grouse. We also suggest changing the wording of #3 to state "When possible, avoid siting energy developments in priority habitats," rather than simply breeding habitats.</p>
35.	F.3.2	F-20	<p>To our knowledge, the yellow-billed cuckoo has not been documented within the oil shale lease area in Colorado. However, this could be due to lack of survey effort as cuckoos may occur in this area. The cuckoo conservation measures should be applied to suitable habitat in Colorado as well as in Utah.</p>
36.	F.4	F-21	<p>The text provides three items that BLM recommends for migratory bird conservation. In addition to these three items, the USFWS recommends that project planning include surveys for migratory birds and nests that would be undertaken prior to construction activities, as well as the identification of measures that will be taken to conserve active nests when located.</p>

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United States Department of the Interior  
NATIONAL PARK SERVICE  
Intermountain Region  
12795 West Alameda Parkway  
Lakewood, CO 80228



In Reply Refer to:  
N16 (IMDE-NR)

MAY 03 2012

VIA ELECTRONIC COPY ONLY – NO HARD COPY TO FOLLOW

Memorandum

To: Colorado State Director, Bureau of Land Management  
Attn: Sherri Thompson, Programmatic EIS Manager

From: Regional Director, Intermountain Region

Subject: National Park Service comments on Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming.

The National Park Service (NPS) thanks you for the opportunity to comment on the Bureau of Land Management's (BLM) subject Draft Programmatic Environmental Impact Statement (PEIS). These comments were developed jointly by the NPS's Natural Resource Stewardship and Science Directorate and Intermountain Region staff reviewers.

**NPS Selection of Preferred Alternative**

We understand the scope of decision making under the PEIS is essentially an administrative action designating public lands administered by the BLM as either available or unavailable (allocation) for applications for commercial leasing, exploration, and development for oil shale and tar sands resources. NPS also recognizes that the allocation is programmatic in nature and based only upon available and known potential impacts on resources from BLM's oil shale and tar sands decision making.

Numerous NPS units, including: Arches, Black Canyon of the Gunnison, Canyonlands, Capitol Reef, and Rocky Mountain National Parks; Colorado and Dinosaur National Monuments; Glen Canyon National Recreation Area; National Historic Trails; and National Natural Landmarks could be potentially impacted by the decision making on this PEIS. Resources potentially affected are: air quality and climate, natural sound, ecological resources (aquatic, wildlife, plants, threatened and endangered species), visual, cultural (cultural landscapes, historic structures and setting, archeological sites), and night sky.

Lacking successful demonstration of technologies necessary for commercial development of oil shale and tar sands, we believe it would be impractical to conduct site-specific National Environmental Policy Act (NEPA) or Section 106 of the National Historic Preservation Act (NHPA) analyses on any application for

leasing oil shale or tar sand acreage at this time. We understand that BLM considers the most appropriate time to raise and consider leasing issues to be “if and when” commercial viability for oil shale and tar sands is demonstrated and leasing applications occur. Information gained from the BLM’s oil shale and tar sands research, development, and demonstration program is critical and necessary to leasing considerations. Therefore, the NPS supports Alternative 3 – The Research Focus Alternative as the PEIS’s Preferred Alternative by chronological necessity.

In addition to our comments herein, we incorporate by reference our previous subject correspondence: 1) April 18, 2008 comment memo on the 2008 PEIS, 2) May 16, 2011 scoping comment memo for the current PEIS in support of our selection of Alternative 3 as the preferred alternative and for future use, and 3) November 11, 2011 comment memo on the Administrative Draft PEIS.

### **National Historic Trails**

The NPS conveyed preliminary comments from the National Trails Intermountain Region (NTIR) office via a November 7, 2011 email to meet a comment deadline for Chapters 1 and 2.

The NPS supports the PEIS having a justified and current approach to management of National Historic Trails. The NPS administers the California, Oregon, Mormon Pioneer, and Pony Express National Historic Trails, which all cross the Green River Basin of Wyoming. The PEIS states that the national historic trail corridor will consist of the trail and a corridor of “at least 0.25 mile” on either side of the trail. However, recent revisions to BLM Resource Management Plans across the western states are revising the past definition of a quarter-mile “trail corridor” and defining much broader corridors (up to five miles or more on either side of the trail tread, depending on the nature of terrain that is visible from contributing segments of the trail). In addition, new BLM guidance for the management of national historic trails corridors, currently in national-level internal review, may adopt a similarly generous definition of “trail corridor.”

The NPS reiterates its belief that enough information exists at this time to devise a process for defining appropriate adequate protective corridors for the National Trails. Without conducting site-specific analysis, the PEIS could recommend a sufficient average protective corridor when calculating acreage available or not available for application for commercial leasing. Instead of the specific acreage offered in PEIS alternatives, the PEIS could use a range based on a defined process for corridor determination. The NPS recommends this broader consideration of resource protection to National Historic Trails within this PEIS.

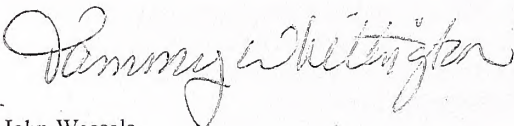
### **Recommendation**

While the NPS understands that additional analyses of specific proposals and technologies for the development and production of oil shale or tar sands are committed to in this particular PEIS, NPS believes that only Alternative 3 – the Research, Development, and Demonstration (RD&D) action alternative provides a phased process for resource protective decision-making. The NPS continues to prefer Alternative 3 as the action alternative.



**NPS Contacts**

The NPS appreciates the opportunity to provide comments on the PEIS. If you have questions, or if we can be of any further assistance, please do not hesitate to contact either of the NPS Cooperating Agency representatives: 1) Geologic Resources Division – Pat O'Dell at 303-969-2013, or 2) Intermountain Region – John Reber at 303-969-2418.

  
for John Wessels

cc:

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Pat O'Dell, Petroleum Engineer; NPS Co-Lead for OSTs DEIS, NPS-NRSS GRD  
Sarah Quinn, Renewable Energy Coordinator, NPS-NRSS GRD  
Ray Sauvajot, Chief, Natural Resources Program, NPS-Pacific West Region

MATTHEW H. MEAD  
GOVERNOR



STATE CAPITOL  
CHEYENNE, WY 82002

## Office of the Governor

May 4, 2012

Sherri Thompson, Project Manager  
Bureau of Land Management  
Colorado State Office  
9700 S. Cass Ave.  
Argonne, IL 60439

RE: Comments on the Draft Resource Management Plan Amendments and Draft Programmatic Environmental Impact Statement for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming

Dear Ms. Thompson,

Thank you for allowing me to comment on the Draft Resource Management Plan (RMP) Amendments and Draft Programmatic Environmental Impact Statement (DPEIS) for the Allocation of Oil Shale and Tar Sands (OSTS) Resources. My comments are specific to Wyoming oil shale resources administered by the Bureau of Land Management (BLM). Wyoming state agencies will provide separate comment based on the particular charge of individual offices.

Oil shale development technologies have not been proven on a commercial scale. Further research, development, and demonstration (RD&D) is warranted. I am optimistic that sensible RD&D will result in recovery methods consistent with Section 369 of the Energy Policy Act of 2005. I support leasing land for RD&D, but not in the manner identified in any of the alternatives.

I believe lease areas that are least susceptible to adverse impacts from oil shale pilot projects and easiest to reclaim are best suited to RD&D objectives. The exclusions identified in Alternatives 2, 3 and 4 undermine a local, participatory approach to land determinations made via the RMP process in cooperation with state and local interests..

The BLM is required to consider precluding oil shale development in these areas; however it is not required to make changes to management decisions.



Sherri Thompson  
May 4, 2012  
RE: Comments on OSTs DPEIS  
Page 2

### **Sage Grouse Core Areas**

The 2012 OSTs DPEIS requires the BLM to analyze and consider excluding oil shale development in the Greater Sage-Grouse core area. This decision is not consistent with Wyoming's Greater Sage-Grouse Core Area Protection strategy. Wyoming's Executive Order 2011-5 is recognized by the U.S. Fish & Wildlife Service as an adequate regulatory mechanism for the conservation of Greater Sage-Grouse. Executive Order 2011-5 does not preclude mineral development. It establishes conditions designed to maintain and enhance Greater Sage-Grouse habitat. The BLM should modify its management objective as it applies to Wyoming to maintain consistency with Wyoming's Greater Sage-Grouse Core Area Protection strategy.

### **Lands with Wilderness Characteristics**

The preferred alternative of the 2012 OSTs DPEIS proposes to exclude oil shale development in all areas the BLM has identified or may identify during the planning process, as having wilderness characteristics. Section 201 of the Federal Land Policy and Management Act requires the BLM to maintain an inventory of all public lands and their resources. There is no requirement to manage lands with wilderness characteristics. The Rock Springs Field Office is in the process of combining the Green River and Jack Morrow Hills RMPs to a single Rock Springs RMP. If the BLM precludes development in lands with wilderness characteristics, the BLM will unduly constrain the Rock Springs RMP range of alternatives. These decisions should be left to the RMP revision process.

### **Areas of Critical Environmental Concern**

In the 2012 OSTs DPEIS preferred alternative, the BLM proposes to preclude oil shale development in all Areas of Critical Environmental Concern (ACEC), regardless of allowances for mineral development. This blanket decision should not be made. In Volume 1, (p. 2-10), the BLM states, "The BLM designates ACECs through land use plans that outline management objectives and prescriptions for each ACEC." Prior land use plans have determined that some ACECs are open for mineral development. Management objectives for ACECs should be left to the RMP revision process. I request that the BLM make no additional determinations for management of ACECs in this OSTs DPEIS.

At various points in the Draft RMP Amendments and DPEIS for the Allocation of OSTs Resources, as they relate to Alternative 2, the BLM precludes oil shale and tar sands leasing from "... all ACECs, *but also areas that had been under consideration for designation as ACECs in the applicable plans undergoing revision or amendment at the time, but which were eventually not designated.*" [Emphasis added.] This has the potential to exclude oil shale development from a majority of lands throughout the planning area. The BLM should remove this management decision from further consideration.

Sherri Thompson  
May 4, 2012  
RE: Comments on OSTs DPEIS  
Page 3

**Adobe Town Very Rare and Uncommon Area**

The BLM proposed decision to close the Adobe Town Very Rare and Uncommon Area to oil shale development is not consistent with the Wyoming Environmental Quality Council's decision allowing in-situ processes or underground mining.

Thank you for the opportunity to comment. Please do not hesitate to contact me or my staff if you have questions or would like clarification.

Sincerely,



Matthew H. Mead  
Governor

MHM:md

cc: The Honorable Mike Enzi, U.S. Senate  
The Honorable John Barrasso, U.S. Senate  
The Honorable Cynthia Lummis, U.S. House of Representatives  
The Honorable John Hickenlooper, Governor, Colorado  
The Honorable Gary Herbert, Governor, Utah  
State BLM Director Don Simpson



**THE BOARD OF COUNTY COMMISSIONERS  
LINCOLN COUNTY, WYOMING**

RESOLUTION # 2012-07

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSH  
(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Lincoln County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

**BACKGROUND**

As background to this Resolution, Lincoln County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and  
WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

Recorded April 14, 2012 2:45 P.M.  
In Book 4 Page 79 at Kemmerer, WY  
No. 2012-07 Jeanne Wagner, Clerk

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

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WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;



WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

81

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

#### RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY LINCOLN COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Lincoln County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Lincoln County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Lincoln calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal

Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

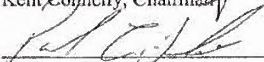
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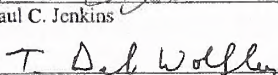
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.
6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

Adopted at the regularly scheduled meeting of the Board of County Commissioners of Lincoln County, held on the 4<sup>th</sup> day of April, 2012.

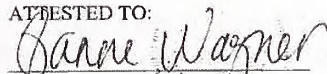
## BOARD OF COUNTY COMMISSIONERS

  
Kent Connolly, Chairman

  
Paul C. Jenkins

  
T. Deb Wolfley

ATTESTED TO:

  
Jeanne Wagner, County Clerk  
Lincoln County, Wyoming





Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000



acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion<sup>1</sup> barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

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<sup>1</sup> On information and belief, Garfield County believes 4 trillion barrels to be a more accurate estimate.



WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move; and

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible<sup>2</sup>; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources<sup>3</sup>; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces; and

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

---

<sup>2</sup> Garfield County states this recital as: "WHEREAS the development and production of oil from oil shale in some processes has been proven to be technologically feasible; and"

<sup>3</sup> Garfield County states this recital as: "WHEREAS, this same technology to extract oil from the oil shale rock requires little to no consumption of water; and"



WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Garfield County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.
2. Garfield County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open Contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.
3. Garfield County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress.
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS.
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
GARFIELD COUNTY, STATE OF COLORADO

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Chairperson

Upon motion duly made and seconded the foregoing Resolution was adopted by the following vote:

Tom Jankovsky Aye  
Mike Samson Aye  
John Martin Aye  
Commissioners

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

I, Jean Alberico, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Resolution is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Garfield County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Glenwood Springs, this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_.

County Clerk and ex-officio Clerk of  
the Board of County Commissioners

\_\_\_\_\_





**CARBON COUNTY PUBLIC LANDS DEPARTMENT**

Rex Sacco, Director

120 East Main Street Price, Utah. 84501

Phone 435-636-3712 Fax 435-636-3264

[rex.sacco@carbon.utah.gov](mailto:rex.sacco@carbon.utah.gov)

May 1, 2012

Oil Shale and Tar Sands Resources Draft Programmatic EIS

Argonne National Laboratory

9700 South Cass Avenue—EVS/240

Argonne, IL 60439.

Sent Via Email Transmission:

<http://ostseis.anl.gov>.

cc. Sherri Thompson

[sthompso@blm.gov](mailto:sthompso@blm.gov)

Dear Ms. Thompson,

Please accept this correspondence as the Board of Commissioners of Carbon County, Utah's request for at least a 30-day extension to the comment period on the on the Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah and Wyoming.

As we understand it, the reason that this action has taken place is to quell a legal challenge. The DOI has since agreed to a settlement. Since the terms of that settlement agreement has not been shared with us; we as cooperators have not been given the full ability to make substantive comments. In all likelihood the additional information would probably rate additional comments from us pertaining the planning and implementation of this action. Without knowing the need of or terms for the settlement, we in fact are not being allowed to comment on the scope of or purpose for this important action. Until such time as the settlement information is brought forth and we are given a reasonable amount of time to comment we doubt that BLM has legally adhered to the dictates of federal land management planning through the processes of coordination (as described in FLPMA 43 U.S.C. 1712 and 43 CFR 1610 (BLM)) and cooperating agency status (as described in Section 1501.6 of NEPA and 40 CFR 1508.5 (CEQ))

Real cooperation will not happen until all information needed to initiate a true NEPA planning process is met. Until then it is not appropriate to expect us to think our comments are really given due diligence or consideration.

We will await your reply.

Thank you for your consideration on this request.

rls

BOARD OF COUNTY COMMISSIONERS

<sup>50255</sup>  
<sup>has the</sup>  
<sup>resolution</sup>  
**SWEETWATER**  
C·O·U·N·T·Y **R**

WALLY J. JOHNSON, CHAIRMAN  
JOHN K. KOLB, COMMISSIONER  
GARY BAILIFF, COMMISSIONER  
REID O. WEST, COMMISSIONER  
DON VAN MATRE, COMMISSIONER

80 WEST FLAMING GORGE WAY, SUITE 109  
GREEN RIVER, WY 82935  
PHONE: (307) 872-3890  
FAX: (307) 872-3992

Thursday, April 19, 2012

Ms. Sherri Thompson - Project Manager  
Oil Shale/Tar Sands Draft PEIS  
BLM Colorado State Office  
2830 Youngfield Street  
Lakewood, Colorado 80215

RE: Sweetwater County Resolution 12-04-CC-02 - Opposing the Bureau of Land Management's (BLM) 2012 Oil Shale and Tar Sands Programmatic Environmental Impact Statement, Project #WO-300-1310-PP-OSHL (OSTS PEIS).

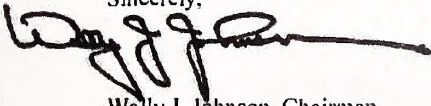
Dear Ms. Thompson:

Sweetwater County hereby formally submits to the Bureau of Land Management Sweetwater County Resolution 12-04-CC-02. By this Resolution, Sweetwater County joins other counties in Wyoming, Utah and Colorado in opposing the BLM's OSTs PEIS for lands administered by the BLM in Colorado, Utah and Wyoming.

Sweetwater County opposes the OSTs PEIS for the purposes of preserving the mineral based economy of the economy of the tri-state region, and for ensuring that the BLM's OSTs PEIS National Environmental Policy Act (NEPA) review process is fair, allows enough for review and is in compliance with all applicable laws.

If you have any questions concerning Sweetwater County's attached Resolution, please contact me at 307-872-3897.

Sincerely,



Wally J. Johnson, Chairman  
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 12-04-CC-02

cc Governor Matt Mead  
Jeremiah Rieman, Governor's Natural Resource Policy Advisor  
Wyoming's Congressional Delegation  
John Ruhs, BLM High Desert District Manager  
Lance Porter, BLM Rock Springs Field Office Manager  
Sweetwater County Board of County Commissioners  
Temple Stoellinger, WCCA Natural Resource Attorney  
Kent Connelly, President - Coalition of Local Governments  
Mary Thoman, President - Sweetwater County Conservation District  
Eric Bingham, Sweetwater County Land Use Director





RESOLUTION 12-04-CC-02  
SWEETWATER COUNTY, STATE OF WYOMING

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-  
PP-OSHL

(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND  
WYOMING,

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Sweetwater County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

BACKGROUND

As background to this Resolution, Sweetwater County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and



WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and  
WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and



WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

## RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY SWEETWATER COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Sweetwater County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Sweetwater County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first



imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Sweetwater County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

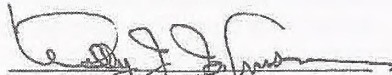
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.


6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

Adopted at the regularly scheduled meeting of the Sweetwater County Board of County Commissioners, held on the 17<sup>th</sup> day of April 2012.

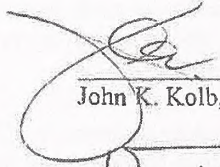
BOARD OF COUNTY COMMISSIONERS



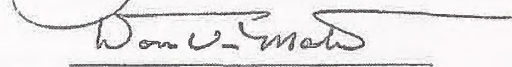
Wally J. Johnson, Chairman



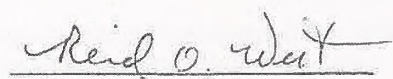
Gary Bailiff, Commissioner



John K. Kolb, Commissioner



Don Van Matre, Commissioner



Reid West, Commissioner

ATTESTED TO:



Steven Dale Davis  
Steven Dale Davis, County Clerk  
Sweetwater County, Wyoming





State of Utah

GARY R. HERBERT  
GovernorGREG BELL  
Lieutenant GovernorOffice of the Governor  
PUBLIC LANDS POLICY COORDINATION OFFICEKATHLEEN CLARKE  
Director

May 4, 2012

Bob Abbey  
Director  
Bureau of Land Management  
1849 C Street NW, Rm. 5665  
Washington, D.C., 20240

Re: Draft Programmatic Environmental Impact Statement  
Possible Land Use Plan Amendments for Oil Shale and Tar Sands  
77 FR 5833

Dear Director Abbey:

Oil shale and tar sands are vital to the future economic and energy balance for the State of Utah and the nation as a whole. Governor Herbert's Ten Year Energy Plan outlines strategies and objectives to facilitate balanced, responsible development of Utah's energy resources, [including oil shale and tar sands]<sup>1</sup>. The United States Geological Survey estimates that oil shale lands in Utah contain 1.32 trillion barrels of recoverable oil equivalent<sup>2</sup>. A viable, commercial scale and privately funded oil shale and tar sands industry is underway in Utah today, so it is with extreme disappointment and displeasure that the state sees the BLM in full retreat regarding the establishment of a complete commercial leasing program for oil shale and tar sands. This retreat is represented by the Preferred Alternative proposed for adoption in the Draft Programmatic Environmental Impact Statement. The Preferred Alternative proposes to reduce the lands available for leasing and to pull back to a Research Development and Demonstration (RD&D) program that does not meet the ultimate requirements of the law. In addition, the issuance in May of proposed rules to eliminate the existing royalty rate for the commercial leasing of oil shale will further erode implementation of a full leasing program as required under the Energy Policy Act of 2005. . These proposed changes to the 2008 allocation decision for the availability of land and the commercial leasing program are in direct opposition to the laws,

<sup>1</sup> <http://www.utah.gov/governor/docs/10year-strategic-energy.pdf>.

<sup>2</sup> Assessment of In-Place Oil Shale Resources of the Green River Formation, WY, CO and UT, USGS June 2011



plans and policies of state and local governments. The state will vigorously oppose these proposed changes to the current oil shale and tar sands program.

The state participated fully in BLM's 2008 NEPA analysis regarding the availability of lands for the leasing of oil shale and tar sands and the structure of a potential leasing program, as required by the Energy Policy Act of 2005. This process concluded with a Record of Decision in 2008 allocating certain lands through the BLM's Resource Management Plans as available for leasing. The BLM also established the basic framework for a leasing program through adoption of leasing regulations, now found at 43 C.F.R Part 3900. (See 73 FR 69414, November 18, 2008) The state concluded its review of this earlier effort with the conclusion that the proposed RMP amendments were consistent with state law, policy and programs, as required under provisions of the Federal Land Policy and Management Act, and expressed full support for the establishment of a commercial leasing program.

Despite the adequacy and sufficiency of the previous Record of Decision and supporting documentation prepared under the provisions of the National Environmental Policy Act, the BLM has reversed the sound decisions it made in the 2008 ROD. The decision to significantly reduce lands available for leasing appears to be predicated on the terms of a Settlement Agreement ("Agreement") drafted in response to litigation<sup>3</sup> brought by parties antagonistic to the development of adequate and sufficient domestic sources of energy. The BLM declares that this revisit of its previous decision is based on the need to take a "fresh look" at the land allocations made in the 2008 NEPA analysis in light of "new information which has emerged since the 2008 OSTs PEIS was prepared."<sup>4</sup> The Settlement Agreement states that BLM must publish a Notice of Intent to consider amending each of the land use planning decisions made by the 2008 OSTs ROD, including alternatives that met the plaintiff's goals. These goals, in general, require that BLM have the option to reject a commercial lease based upon "environmental or other resource considerations," and have the option to decline to offer a commercial lease unless it can be shown that "operations can occur without unacceptable environmental risk."<sup>5</sup>

Nowhere in the terms of the Settlement Agreement is there a requirement that the BLM select an alternative that furthers the goals of the plaintiffs. The BLM has misconstrued the intent of the Agreement and abrogated its decision-making responsibilities in favor of an alternative that it was only required to consider, not select.

In furtherance of the Settlement Agreement, the BLM proposes to eliminate the current provisions of the commercial leasing program in favor of a Research and Development program, reduce the amount of acreage available for leasing, and, shortly after the current period to comment on the DPEIS is closed, offer another rulemaking which will propose to "remove the royalty rate for oil shale production."<sup>6</sup> The eleven day period between the closing of the comment period for the DPEIS and the potential publication of royalty rate provisions affecting oil shale and tar sands does not allow cooperating agencies the chance to include royalty rate and

<sup>3</sup> *Colorado Environmental Coalition, et. al. v. Salazar*, Civil Action No. 09-cv-00091-JLK, Colorado.

<sup>4</sup> See Executive Summary page 1-1, 1-4

<sup>5</sup> Defendants' and Plaintiffs' Joint Motion to Administratively Close the Case, *Colo Env. Coalition v. Salazar*, page 3.

<sup>6</sup> *Id.*



commercial leasing aspects into their comments, thereby impermissibly segmenting the proposed rulemaking as envisioned by Congress. For this reason, the state requested an extension of the comment period, and advises the BLM that it expects the comments upon any proposed royalty rate adjustment be incorporated into the analysis of the issues within the DPEIS.

### **Summary of the DPEIS Review**

The state has reviewed the Draft Programmatic Environmental Impact Statement accompanying BLM's current proposal. The state finds that the information contained within the DPEIS is procedurally deficient and cannot support the proposed Resource Plan Amendments. Specifically, the state finds that the BLM has not been diligent in locating and considering information generated since the 2008 Record of Decision. This is unacceptable, particularly given the ease with which this information may be obtained. The State of Utah finds that the DPEIS is incomplete, biased and does not meet the required "hard look" purpose of the National Environmental Policy Act. Any final EIS based upon the provisions contained in this Draft cannot support a decision by the BLM which would alter the provisions in the 2008 ROD concerning the availability of lands for oil shale and tar sands leasing. Decisions based on analyses in the DPEIS will be arbitrary and capricious as a matter of law, and will not be consistent with state law, policy or procedures if the Preferred Alternative, as identified in the DPEIS, is chosen as the final decision.

As a general point of discussion, documents currently prepared under the provisions of the National Environmental Policy Act have evolved in recent years into a format which is staggering in its ability to obfuscate information. These documents are so convoluted that the reader is unable to discern the validity and adequacy of the NEPA analysis on which the agency bases its conclusions, especially in the short time frame provided. Nonetheless, the state has been able to discern the following salient facts and identify a singular bias by BLM against information supporting the viability of the oil shale and tar sands industries, and local and state economies, instead favoring a particularly antagonistic position towards oil shale and tar sands development.

### **Focus of the Current Proposal**

The Executive Summary for the DPEIS states BLM has decided to take a "fresh look" at the land allocations made in the 2008 review based upon the Settlement Agreement and upon "new information which has emerged since the 2008 OSTs PEIS was prepared." (ES-1) BLM further refines this fresh look to include a reconsideration of the 2008 allocations and determine whether it is "appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale," with an equivalent decision for tar sands.<sup>7</sup> The BLM states that the reason for this reconsideration is specifically 1) the need to review new inventories for lands having wilderness characteristics, 2) the March 2010 decision of the Fish and Wildlife Service concerning sage grouse, and 3) the completion of studies related to Areas of Critical Environmental Concern (ACECs).

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<sup>7</sup> Executive Summary, p. ES-1,



In a related action required under the Settlement Agreement, the BLM will propose amendments to the oil shale final rule to remove the royalty rate codified in BLM regulation (43 CFR 3903.52) and perhaps propose alternative adjustments to the royalty rate. These proposed royalty rate adjustments are not scheduled to be made public until mid-May 2012, after the comment period for the DPEIS has concluded.

As discussed further below, the state finds that there is no new information concerning lands with wilderness characteristics in Utah beyond that considered for the 2008 Oil Shale EIS or the 2008 Resource Management Plans. Management for Sage grouse and its habitat is being addressed through a massive effort by the affected states, the BLM, the Forest Service, and the U.S. Fish and Wildlife Service, with these efforts determining the needs of the species and the means to balance species protections with provisions for human needs. Any proposed discussion of sage grouse needs in the current DPEIS is not ripe for analysis, and any proposed restrictions due to sage grouse are premature. Any decision to amend currently operative RMPs, based on an issue currently undergoing such a massive review, would constitute an arbitrary and capricious decision.

The state finds that the BLM has not only based its decision on new information where none exists, but also has, to compound this egregious error, inexplicably ignored new information which supported the conclusions of the 2008 decision, and failed to analyze significant new information that would satisfy NEPA's required hard look.

#### **Congressional Mandate**

The Energy Policy Act of 2005 (EPACT 2005), Section 369, is the driving force behind the BLM's original Oil Shale and Tar Sands (OSTS) Programmatic Environmental Impact Statement and the resource allocation decisions it supported. Section 369 of EPACT 2005 specifically states "not later than 18 months after the date of enactment of this Act... the Secretary (of Interior) shall complete a programmatic environmental impact statement for a commercial leasing program for oil shale and tar sands resources on public lands, with emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming."

BLM advanced the purposes of EPACT 2005 through its conclusions in the 2008 OSTs Record of Decision and the accompanying decisions within 2008 Records of Decision for the Vernal, Price and Richfield Field Offices, along with adoption of the oil shale leasing regulations codified at 43 CFR Part 3900. These decisions successfully laid out the availability of land containing the resources and the framework of the regulatory structure for acquiring leases on BLM land for the development of these resources. The state believes that BLM did an adequate and thorough job in reaching the decision contained in the 2008 ROD. The state also applauds the agency's efforts in 2008 to conform with state and local laws as well as engage in significant cooperative exchanges with countless agencies and stakeholders.

The current proposal, and the supporting documentation found in the DPEIS, takes a huge step in the wrong direction. Congress did not ask BLM to determine if commercial leasing was appropriate or not, or to wait on a commercial leasing process in favor of some other



proposal. As noted on page 1-3, EPACT 2005 requires the BLM to complete a programmatic EIS, establish a leasing program, consult with the Governors, conduct lease sales and consider land exchanges. The current proposal does not meet those requirements and directly ignores both the mandate and timeline given to it by Congress under Section 369 of EPACT 2005.

In addition, the Preferred Alternative will push commercial leasing farther into the future by requiring more unnecessary planning and research and development before commercial leasing can be established. Therefore, the Preferred Alternative is at direct odds with and contravenes the directions given by Congress in the EPACT 2005 to establish an oil shale and tar sands commercial leasing program.

#### **Precedential Value of the Settlement Agreement**

BLM has clearly stated that this entire effort is the result of the settlement of litigation brought by various environmental groups. Litigation, by its very nature, excludes many stakeholders interested in the issue litigated. Because full public involvement is required by NEPA and other laws, the Settlement Agreement requires only that the BLM propose various adjustments to the existing regulatory and planning provisions. The provisions of NEPA require that other alternatives be considered as well, including the option of doing nothing, which in this case would keep the 2008 land allocation decision intact.

The Settlement Agreement itself is not determinative of the final decisions made in response to the current DPEIS. This means that the No Action Alternative is as viable as the alternatives identified in the Agreement. Yet the Agreement, which was made without the involvement of many of the relevant stakeholders, including the state, is apparently being used to drive a hasty decision. The BLM informed the state and other stakeholders that the calendar is tight, and there is no room for additional analysis and review. This rush to complete the DPEIS by an artificial deadline is arbitrary in light of the vast amount of information the BLM must analyze to adequately meet the requirements of NEPA.

#### ***Request of the State***

As shown below, this rush to complete has produced numerous major and minor errors which combine to produce a flawed product. The state urgently requests the BLM:

- slow down the analysis;
- carefully analyze the information offered below concerning the maturity of the oil shale and oil sands industry in Utah;
- recognize the clear delineation of jurisdiction between the states and the BLM;
- review the impacts to the social and economic structure of the state and local governments;
- examine the needs of the industry within larger venture capital markets; and
- produce a complete analysis of impacts.

If necessary, the state requests the BLM and its attorneys petition the court for additional time, based upon the reality of completing the tasks and further analysis outlined below.



### Consultation with the Governors

The provisions of EPACT 2005 require that the BLM consult with the Governors of the states involved in the creation of commercial leasing program. Specifically, Section 369 requires the BLM to

Consult with the Governors of States with significant oil shale and tar sands resources on public lands, representatives of local governments in such states...to determine the level of support and interest in the States in the development of tar sands and oil shale resources.

During the preparation of the 2008 Record of Decision, the BLM met on several occasions with the representatives of the Governors of the three states involved, and as a result were advised of the necessary "level of interest." Utah advised the BLM that the level of interest in Utah was high, and that if necessary, the BLM should proceed with a commercial leasing program in Utah even if the other states were not interested. In stark contrast, no such meetings have taken place with the Governor of Utah or his representatives during the current PEIS effort.

#### *Request of the State:*

The State of Utah urgently requests meetings with the BLM which meet the letter and the spirit of the requirement of EPACT 2005 to consult with the Governors, and local government, to determine the level of support for a commercial program for the leasing of oil shale and tar sands. Only then will the BLM be able to fully analyze the social and economic impacts to the state as well as work with the state on decisions affecting a critical component of the state's economy. These meetings must include thorough discussion of all information and issues pertaining to a commercial leasing program, including royalty rates, the structure of the leasing program, and the availability of lands for leasing.

### State Authority

The DPEIS reflects a lack of respect for state authority and capabilities. The BLM repeatedly asserts that it wishes to hold off on implementing a commercial leasing program until more information is available on the impacts of oil shale and tar sands operations.<sup>8</sup> BLM explicitly asserts on many occasions in the DPEIS that oil shale extraction processes are unknown and that it must delay allocations of lands for leasing pending further study. In contrast, the state asserts that oil shale processes are fundamentally composed of discrete extractive operations that have existed for decades, all of which are covered by state authority and regulatory programs. For example, the BLM states that it requires more information on the impacts on water quantity and quality<sup>8</sup> from oil shale and tar sands operations. Yet information concerning a permitted commercial operation pertaining to water quantity and quality are readily available on the Division of Oil, Gas and Mining's website. The BLM, in cooperation with its state and local regulatory partners, can readily engage in the discussion of impacts to the natural, social and economic environments from these well-understood processes.

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<sup>8</sup> ES.7, found on ES-9.



The extraction of kerogen from oil shale, as proposed in Utah, is nothing more than a mining operation followed by a retort operation. Mining operations have existed in Utah for over a hundred years and the state has implemented the necessary regulatory controls to mine in an environmentally sensitive manner, using the latest in technology and management practices. Retorts have been used since ancient days to reduce ore and produce useful products. Oil shale and tar sand operations involve well-defined, basic extraction, processing, and upgrading techniques that have been in use in Australia, Brazil, Canada, China, Estonia, Ireland (commercially in Canada and Estonia), and tested for over 50 years in the U.S. Oil shale and tar sand development activities have existed on Utah State lands for many years with adequate protection of the environment under state regulatory programs sanctioned by the Office of Surface Mining and the Environmental Protection Agency.

Water is owned by the state in trust for its citizens and is subject to the state water appropriation system managed by the Utah State Water Engineer. The federal government must participate in the state's allocation system should it desire to quantify any water rights it may claim.<sup>9</sup> Water rights appropriations are for specific diversion or use proposals. A general water right for general use by the public lands is not allowable under state law. As discussed further below, the state believes and asserts that water is available for oil shale and oil sands development, both through existing water rights and through the general market system. The state's allocation system examines issues related to availability, prioritization, interference with other rights, and related factors. BLM's decision to defer analysis until it obtains further information on water availability imposes BLM vague desires onto the decision-making process of the state. The state will make decisions regarding the availability of water, not the BLM. The state will, consistent with the authority of the state water engineer, process applications to approve or transfer water rights for oil shale or any other use.

The same is true for air quality and water quality. The state has primacy for enforcement of the Clean Air and Clean Water Acts within the state and works closely with the EPA to insure the protection of these resources. The Utah Department of Environmental Quality, along with federal, state, and industry partners is currently studying issues related to air quality in areas containing the most geologically prospective oil shale resources, and will work to jointly find solutions to air quality issues in these regions. An inventory of emission sources is underway in conjunction with studies of the factors surrounding the formation of ozone during the winter months in the Uintah Basin. Protection of water quality from underground or surface mining operations is well within the regulatory authority and expertise of the state. Although issues related to the particular soil chemistry and topography must be addressed, the state is perfectly capable of the project specific analysis and decision making necessary to address any environmental concerns. See the Addendum below for further information concerning the permitting process.

#### ***Request of the State for Further Analysis:***

Surface and underground mining as well as retorting generates no major unknowns for BLM beyond those presented by other mining and refining operations. The State of Utah strongly requests that the BLM make use of the information readily available to it from its

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<sup>9</sup> 43 U.S.C. Section 666.



regulatory partners and conduct the required environmental analysis of the impacts of well-known processes rather than continue to insist that the production of a refinable liquid product from oil shale is shrouded in mystery. The BLM must defer to the expertise and authority of the state in these matters, use available information about standard mining and retort processes for its environmental analyses, and stop insisting that it cannot make resource allocations at this time based on upon vague, ill-defined assertions that more information is necessary.

#### **Lands with Wilderness Characteristics**

BLM conducted inventories of lands for the presence of wilderness characteristics prior to the Record of Decisions made for the 2008 oil shale allocation decisions and all other management issues covered in the final 2008 RMPs. No inventories for wilderness characteristics have been conducted since that time. As part of the 2008 RMP decision process, the state commented on management prescriptions for the lands identified, in whatever manner, as possessing the characteristics of wilderness. At the time, the state informed BLM as follows:

The State of Utah has reviewed BLM's inventory of and proposed management for lands identified as possessing wilderness characteristics. The state does not believe that BLM has the authority to create a category of management based solely on the characteristics of wilderness. The characteristics of wilderness, or their constituent elements, were first recognized by the Wilderness Act of 1964 and passed to the BLM within the provisions of Section 603 of the Federal Land Policy and Management Act of 1976. The authority within Section 603 has now expired by its own terms. The state recognizes that recent court decisions have affirmed BLM's authority to inventory for wilderness characteristics, and have required the BLM to consider new information about these characteristics in its documents prepared under the National Environmental Policy Act. These decisions do not, however, consider or affect the BLM's statutory authority for management policies on the BLM lands. The state cautions BLM against an overly broad reading of these decisions. Management authority must be derived solely from the specific provisions of the Federal Land Policy and Management Act, (e.g. Areas of Critical Environmental Concern) or other specific federal legislation, and it is incumbent upon the BLM to carefully define its detailed legal rationale and reasoning for its proposed management policies, provisions and categories.

The DPEIS does not contain any such analysis of its authority to manage for wilderness characteristics. In addition, the DPEIS does not contain any new information on inventories for lands contained within inventories for wilderness characteristics. All inventories in the areas of concern in the DPEIS were completed prior to 2008. Because the BLM presents no new information regarding new inventories that would indicate the reasons for an increase, decrease or adjustment, related to the management of lands with wilderness characteristics, the BLM must carry forward the decisions made in the 2008 oil shale EIS and the 2008 RMPs for lands managed for wilderness characteristics. A decision containing new management prescriptions for lands with wilderness characteristics would be contrary to the decisions in the 2008 Records of Decision and would therefore be arbitrary and capricious, as it would not be supported by any significant new information.



Since 2008, the State of Utah has passed several laws which have bearing on this decision regarding the protection of lands with wilderness characteristics. First, Utah Code Section 63J-8-103(4) provides that the public lands should not be “segregated into separate geographical areas for management that resembles the management of wilderness, wilderness study areas, wildlands” and the like. Instead, state law indicates the need for BLM to simply adhere to the normal standard of preventing unnecessary and undue degradation to the land.

In addition, Senate Bill 83, passed in the 2012 General Session of the Utah Legislature, provides that certain areas of Uintah, Duchesne and Daggett Counties are designated as an Energy Zone, and managed for the primary purpose of the production of energy. Senate Bill 83 provides in part, as follows:

*The lands comprising the Uintah Basin Energy Zone contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential; and the highest management priority for all lands within the Uintah Basin Energy Zone is responsible management and development of existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States.*

*The state supports a cooperative management approach among federal agencies, state, and local governments to achieve broadly supported management plans for the full development of all energy and mineral resources within the Uintah Basin Energy Zone.*

*The state calls upon the federal agencies who administer lands within the Uintah Basin Energy Zone to fully cooperate and coordinate with the state and with Daggett, Uintah, and Duchesne Counties to develop, amend, and implement land and resource management plans and to implement management decisions that are consistent with the purposes, goals, and policies described in this section to the maximum extent allowed under federal law, ...[and to] refrain from any planning decisions and management actions that will undermine restrict, or diminish the goals, purposes, and policies for the Uintah Basin Energy Zone...and refrain from implementing a policy that is contrary to the goals and purposes [of the Energy Zone].*

BLM must give the provisions of this law full consideration based upon respect for the authority of the state to provide for the general welfare of the citizens of the state and must review and analyze the purpose and effect of the law in the DPEIS. Additionally the law is an expression of state planning for the resources of the area, and is entitled to consideration as part of the consistency review discussed below.

Because the BLM does not possess any new information about lands with wilderness characteristics from that available in 2008, a change in any type of management for the lands, from that finalized in the 2008 RMPs and the 2008 Oil Shale EIS, as is proposed by various alternatives within the DPEIS, would constitute an improper use of Secretarial Order 3310, issued December 23, 2010. Secretarial Order 3310 was defunded by Congressional action, which required that no funds may be used to implement or enforce the Order. In this case, the



BLM is proposing to restrict the availability of these lands for the commercial leasing of oil shale and tar sands based solely upon the existing, older inventory for the presence of wilderness characteristics. This clear expression of intent to manage for wilderness is the functional equivalent of the creation of wild lands as proposed within the Secretarial Order. Because the Congressional action clearly stated that the BLM may not implement or enforce Secretarial Order 3310, the DPEIS must be rewritten to reflect this fact.

***Request of the State for Further Analysis:***

The State of Utah requests the BLM revisit its analysis of the proposed management prescriptions concerning the existing inventories of lands with wilderness characteristics, and

- Recognize that no new information is available since the 2008 Records of Decision;
- Recognize the soundness of the decisions made in the 2008 for the Resource Management Plans Records of Decision and the Oil Shale Record of Decision;
- Adopt the intent of state law and policy upon the subject of wilderness and wilderness-like management;
- Adopt the intent of state law and policy concerning the Energy Zone; and
- Adhere to the Congressional moratorium requiring BLM not enforce in any manner Secretarial Order 3310.

The state specifically requests that the BLM adhere to the decisions made in the 2008 Records of Decision concerning lands with wilderness characteristics, and support BLM's previous sound decisions by adopting the currently proposed No-action alternative.

**Sage Grouse**

Eleven of the western states, including Utah, are engaged in a cooperative effort to review the status of the Greater Sage grouse within its existing range, and to determine the elements of plans, conditions or stipulations, along with other mechanisms, to preserve the sage grouse while allowing economic development and growth to occur. The state of Utah has been sponsoring programs to protect the sage grouse for years, but the latest coordinated effort is occasioned by the March 2010 decision of the U.S. Fish and Wildlife Service concerning the potential listing of the sage grouse under the provisions of the Endangered Species Act. The Fish and Wildlife Service determined that a listing was warranted but precluded by higher priorities. This decision is now set for review by the end of 2015.

As a result of the listing decision, BLM and the Forest Service have initiated, through a Notice of Intent to Prepare an Environmental Impact Statement, a massive effort to determine if amendments to various Resource Management Plans (BLM) and Land Use Plans (Forest Service) are required in order to address the issues raised in the FWS decision. This effort is scheduled to be completed in 2014.

The State of Utah provided comments to the BLM planning process, and stated as follows:



*The Notice of Intent states very specifically that the reason for the entire effort is to respond to the decision by the U.S. Fish and Wildlife Service that the listing of the Greater Sage Grouse is "warranted, but precluded" by higher listing priorities, and that the FWS asserts that BLM and Forest Service lands are the key to sage grouse survival. To the contrary, the state firmly believes that sage-grouse populations in Utah are in good condition, are receiving significant management attention and, therefore, do not warrant listing under the Endangered Species Act. The state will challenge a proposed listing whenever and wherever necessary. The state requests that the BLM and Forest Service receive, review and fully analyze all evidence offered by the state and others in support of its position that a listing is not warranted as part of the analysis of the impacts of the EIS provisions and alternatives. The state specifically requests that the BLM fully analyze and explain the ability of the BLM and Forest Service to protect the species without the cooperation of other landowners, as discussed further below.*

*In fact, the state strongly asserts that a decision to list sage-grouse range-wide, but especially in Utah, would be a major setback to current conservation management activities. Sage grouse in Utah, while challenged, are biologically stable. Utah conservation efforts are being conducted at a scale that will likely be hard to match anywhere else across the species' range. Finally, organizational and funding mechanisms unique to Utah have fostered cooperation and focus for continued and long-term conservation into the future. The state is concerned that unnecessary restrictions imposed by the BLM and Forest Service will upset the successful efforts underway in Utah, to the detriment of the species.*

*To further the state's commitment to conservation of the sage grouse and economic health of the state, the Governor recently convened a Sage Grouse Working Group. This Working Group is comprised of representatives of the Governor's Office, BLM, Forest Service, Fish and Wildlife Service, National Resource Conservation Service, Utah's Office of Energy Development, School and Institutional Trust Lands Administration, Department of Agriculture and Food, Division of Wildlife Resources, and representatives of the oil and gas industry, transmission line industry, oil shale industry, ranching community, county commissioners, The Nature Conservancy, and Utah State University. The Governor's charge directed the group to provide recommendations for the protection of sage grouse, while continuing to provide for a healthy economy and protecting private property rights. The Working Group was recently briefed on issues related to the life cycle of the sage grouse and previous and ongoing efforts to protect the species, and expects to provide recommendations within a few months. These recommendations are expected to lead to a state sage grouse plan soon thereafter. The state will expect the BLM and Forest Service to adhere to the provisions of this plan, both as a matter of respect for state authority, and in compliance with BLM's Instructional Memorandum 2012-039, which requires the BLM to make use of state data related to wildlife.*

The State of Utah, in response to these factors, is currently, through the Working Group, engaged in an effort to review habitat needs of the sage grouse and make determinations about the relative importance of the habitat against the presence of other human and wildlife needs. The state is doing this in addition to weighing other options concerning the need to list the



species. This process is expected to result in the designation of areas of greater and lesser importance. A similar process in the state of Wyoming resulted in the designation of areas as "core" and "non-core," which is a possible outcome of the Utah process as well. The state assumes the Wyoming results, approved by the FWS, are the origin of the term core within the DPEIS. The BLM also recently issued an Instructional Memorandum concerning management of the sage grouse, covering the interim period until the massive planning effort concludes. In it, the term priority habitat is employed, along with general habitat, which is presumably the source of those terms within the DPEIS.

The state is very disappointed, therefore, to see "core" or "priority" discussed within the DPEIS for the State of Utah, and maps prepared with "core" or "priority" habitat displayed. The state, which is the entity with management authority over the sage grouse, has not yet reached a conclusion about any habitat designations, and does not expect to do so until the Working Group process is completed. The legend for Figure 2.3.3-2,<sup>10</sup> entitled "Lands Excluded from Application for Oil Shale Leasing Under Alternative 2 in Utah," clearly shows lands defined as Core or Priority. The state has not yet made any such determination, and strongly objects to BLM making such a determination. The information contained in the DPEIS about core or priority sage grouse habitat in Utah, as evidenced by this map, and any analysis based upon the information, is wholly inaccurate, and must be altered to reflect the true situation.

***Request of the State for Further Analysis:***

Because the data concerning sage grouse habitat is inaccurate, BLM must remove all reference to it in the DPEIS, and replace it with the habitat types which result from the efforts of the state's decision after the Working Group's work is completed. The BLM and the FWS are both represented on the Working Group, and will have every opportunity to influence the final product. Proceeding with the current data does not advance a completely and correctly informed analysis, but only perpetuates the continued use of erroneous data and misinformed opinion.

**NEPA Requirements – Social and Economic Studies**

BLM has not presented a serious study of the social and economic impacts of the proposal as required by the provisions of the National Environmental Policy Act. The DPEIS contains discussion about the generic social effects of a boom and bust economic cycle, but does not contain a countervailing discussion of the social effects of limited and reasonable economic growth. The DPEIS discusses the history of oil shale development twenty years ago, but includes no discussion concerning current energy needs, the current pricing structure for oil and gas, and the corresponding ability of oil shale and tar sand operations to continue to contribute a larger share of a healthy economy in the eastern part of Utah, and for the state as a whole. The discussions in the DPEIS generically concerning boom and bust economic cycles, without any discussion of reasonable economic growth alternatives demonstrates the agency's bias against development of oil shale and tar sands.

The DPEIS must to include a discussion of the entire market process for creation of a viable oil shale and tar sands industry, including its role in the regulatory certainty needed to

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<sup>10</sup> See page 2-38, DPEIS.



attract venture capital. The State of Utah expects the BLM to be an active partner in the marketing of opportunities to diversify the domestic production of the nation's energy needs, not hang its institutional head claiming ignorance of real world market realities.

BLM needs to revisit the analysis of socioeconomic impacts in the DPEIS and present additional analysis of the opportunities to encourage a viable oil shale and tar sands market. BLM has the resources and the expertise to evaluate the reasonable effects of simple mining and retort operations. BLM should immediately communicate with industry to determine the needs for certainty and about reasonable development opportunities. The state knows that if BLM delineates reasonable requirements for resource development, industry will participate. There is clear evidence that industry is engaging in oil shale and tar sands development in Utah. Based on past experience with oil shale and tar sands development on state and private lands in Utah, growth will be measured and moderate, which is a viable alternative to the boom and bust scenarios presented in the DPEIS.

The State of Utah understands the value of a balanced economy, and values the contributions of tourism to the state's economy. However, BLM must not assume that tourism is the only possible contributor to a stable economy in the Uintah Basin and elsewhere in Utah. BLM must recognize and analyze studies which demonstrate the value of oil and gas to the Uintah Basin, and examine the benefits the oil shale and tar sands industry could bring to providing a stable and robust economy in the area. BLM must examine the contributions of tourism, oil and gas, government and other existing industries in the area, then analyze the value that a moderate growth oil shale and tar sands industry might add to that by bringing additional diversity to the area's economy.

BLM must also not falsely assume that a viable tourism industry is put at risk by oil shale production in the Uintah Basin. This is not to say that BLM should not discuss tourism and outdoor recreation as part of a significant economic evaluation – it should. But BLM must also evaluate wages from the tourism industry against those of the energy industry and evaluate the prospects for employment, revenue and community stability based on those figures.

#### *Other Economic Studies - Examples:*

The state contracted with Utah State University and the University of Utah to complete a number of economic and social-attitude studies regarding the use of and values attributed to public land resources by Utah residents. These studies assess: general attitudes of the citizens toward the public lands, off-highway vehicle use on public lands, grazing on public lands, and economic impacts of oil and gas exploration and production. Below are short summaries of a number of these studies, which are available on the state's website.

A statewide survey of the residents of Utah, the *Utah Public Lands Study*, was conducted in the summer of 2007 by Utah State University. One focus of the survey involved assessing various ways in which residents engage in economic activities that are linked to public lands and resources. Other major purposes involved assessing attitudes toward public lands as part of the residents' quality of life and sense of community, and assessing attitudes and preferences regarding public land management.



Preliminary results from the *Utah Recreational Off-Highway Vehicle Use Study* conducted by Utah State University show OHV use becoming increasingly popular, but the number of trips taken per year declining. Recreational activities that OHV users participate in are diverse, including both passive (sightseeing and photography) and active (camping and hiking). Rider motivation includes stress relief and nature appreciation, along with achievement, stimulation, independence and socialization with others. The study also shows economic impacts broken out by direct and total impact to Duchesne, Uintah and Daggett counties as well as by regional gross output, employment, household income, and value-added income. A "Random Utility Model" will be used to measure change in the allocation of trips across counties, measure change in the total number of trips taken by Utah OHV users, measure change in economic value accruing to OHV users and generate trip-distribution information for use in economic impact modeling. Full results will be made available upon completion of the study.

The Utah State University study, *Trend Information for the Vernal RMP: Livestock Industry Issues* indicates that the trend in livestock grazing preference and authorized use in the Vernal Field Office Planning Area is downward. The permitted AUM level proposed in the Draft RMP Preferred Alternative is a reduction of 8,323 AUMs, a 5.7 percent reduction in preference from the current level. This reflects a reduction of 15,376 AUMs, (10 percent) from the level 16 years ago.

The Bureau of Economic and Business Research at the University of Utah has completed an economic impact study of the oil and gas exploration and production industry in the Uinta Basin titled *The Structure and Economic Impact of Utah's Oil and Gas Exploration and Production Industry: Phase I - the Uinta Basin*. The Phase I study shows that rapidly rising energy prices and the corresponding rise in oil and gas activity are causing an economic boom in the Uinta Basin. During 2006, the oil and gas exploration and production industry was directly responsible for 19.9 percent of employment and 34.8 percent of total wages in the Uinta Basin, while those figures rose to 49.1 percent of the employment and 60 percent of the wages in the Basin when the indirect (multiplier) effects were considered. The industry also has a sizeable fiscal impact on local governments in the Uinta Basin. Property taxes paid on producing oil and gas wells were \$18.2 million in 2006 and accounted for 38.7 percent of all property taxes paid in the two counties.

***Required Further Analysis Requested by the State:***

These studies, and other similar work, should be discussed as part of the examination of the social and economic structure of the area influenced by the upcoming oil shale and tar sands mining activities. Only after such consideration can the BLM make reasoned analysis of the economic impacts of the required leasing program. BLM must not make decisions which may influence the structure and robust nature of local and state economies without an examination of the ability and desire of the local economy to face the challenges raised by the proposal. The DPEIS focuses almost entirely on the perceived perils of a boom and bust cycle. This is pejorative and misleading, and does not reflect a serious attempt to analyze the potential contributions, both positive and negative, from the proposed leasing program. BLM must step back, and redo the social and economic analysis with these factors in mind. Failure to do so



violates the provisions of NEPA requiring analysis of the social and economic impacts of a proposal to the same degree as the environmental analysis.

### **Support for the Mission of SITLA**

Utah's School and Institutional Trust Lands Administration (SITLA) is an independent state agency responsible by law for management of lands granted to the State of Utah pursuant to the Utah Enabling Act, (Act of July 17, 1894, 28 Stat. 109), for the financial support of Utah's public schools and other state institutions. The United States Supreme Court has referred to this Enabling Act land grant as a "solemn compact" between the United States and the State of Utah that obligates the United States to take into consideration the purposes of the grant when managing federal lands.

The State of Utah is obligated by both the Utah Enabling Act and the Utah Constitution to act as a trustee in managing school trust lands. Among the fiduciary duties imposed by this trust on SITLA is the duty to manage trust lands in the most prudent and profitable manner possible, and not for any purpose inconsistent with the best interest of the trust beneficiaries. Revenues from school trust lands are deposited in the Permanent School Fund, a permanent endowment for public education. Interest and dividends from the Permanent School Fund are distributed to individual public schools statewide annually to supplement critical academic needs.

SITLA manages lands within the boundaries of the BLM Field Offices under discussion in the DPEIS. Most of these state trust lands are comprised of numbered sections 2, 16, 32 and 36 in each township, representing the grant of in-place school sections made by the Utah Enabling Act; however it also includes lands acquired from the federal government in a land exchanges. The significance of the checkerboard pattern of land ownership is that because most trust lands are surrounded by BLM lands, planning decisions made by BLM with respect to rights-of-way, withdrawals from mineral leasing, special designations (e.g. ACECs, management for wilderness characteristics, etc.) and other determinations inherently impact the state trust lands, making them an island within the surrounding BLM lands. BLM's decisions on how to manage its lands directly affect the ability of the State of Utah to manage state trust lands for the purposes for which they were granted by Congress, which was to provide revenue for public schools and other beneficiary institutions. BLM management is an issue of significant impact to Utah's school trust. For example, lands within the Vernal Field Office make up approximately 13 percent of Utah's total surface trust land portfolio.

Conversely, management by SITLA of state trust lands within BLM areas of special designations can directly affect the ability of BLM to achieve management objectives. SITLA is not obligated by law, for example, to manage its lands within BLM areas managed for wilderness characteristics or ACECs for environmental protection. SITLA development of inholdings consistent with SITLA's governing mandate may substantially defeat the purpose of the special designation.

### ***Request of the State for Further Study***



BLM has an obligation to include in its planning an effective and timely means of addressing the impact of federal land actions on in-held state trust lands. BLM must engage in a serious study of its need to support the purposes of the grant of lands to the state for the support of the common schools. Specifically, the BLM needs to rework the DPEIS to include effects of the lack of a leasing program upon the ability of the state, through SITLA, to expect a robust leasing program for oil shale and tar sands and the related expectation of revenue.

In addition, the DPEIS addresses the requirements of Section 369(n) of the Energy Policy Act of 2005 (EPACT), Public Law 109-58, only in a cursory manner. Section 369(n) provides in relevant part:

(n) LAND EXCHANGES.

(1) IN GENERAL. To facilitate the recovery of oil shale and tar sands, especially in areas where Federal, State, and private lands are intermingled, the Secretary shall consider the use of land exchanges where appropriate and feasible to consolidate land ownership and mineral interests into manageable areas.

(2) IDENTIFICATION AND PRIORITY OF PUBLIC LANDS. The Secretary shall identify public lands containing deposits of oil shale or tar sands within the ... Uintah... basin..., and shall give priority to implementing land exchanges within those basins.....

At page 1-6, lines 32-34, the PEIS states that the decision in the 2008 ROD that “the specific decision that the BLM will consider and give priority to the use of land exchanges to facilitate commercial oil shale development pursuant to Section 369(n) of the Energy Policy Act of 2005” will be carried forward through this planning process. This statement should be clarified to confirm that, pursuant to the EPACT 369(n) directive, BLM lands that are not made available for commercial leasing will nonetheless be available for state exchange, subject to other applicable laws applicable to federal-state land exchanges.

### Consistency with State Law, Plans and Policies

The State of Utah is extremely supportive of the consistency review requirement, as provided in federal law (43 U.S.C. § 1712(c)(9)) and regulation (43 C.F.R. § 1610.3-2). Pursuant to this regulation, RMPs shall be

*consistent with officially approved or adopted resource-related plans, and the policies and procedures contained therein, of ... State and local governments, ... so long as the ... [RMPs] are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands.*

BLM correctly notes this requirement, but then qualifies the requirement to be that of consistency with state and local plans, where possible.<sup>11</sup> The DPEIS also discusses the plans of the City of Rifle for economic development, and mentions that the final Record of Decision should consider consistency with the City's plans.<sup>12</sup> The state certainly believes that BLM

<sup>11</sup> Section 1.4.5, Page 1-21.

<sup>12</sup> Id.



should consider the views of the City of Rifle, but more accurately consider consistency with state and local plans, policies and programs as demonstrated to BLM through the Governor's consistency review.

As an explanation for the idea that BLM need only be consistent with state and local laws, plans, policies and programs, the BLM previously provided an interpretation of the consistency requirement.<sup>13</sup> BLM stated that the "RMP ... [must] be ... consistent ... to the maximum extent possible by law and [that] inconsistencies between Federal and non-Federal Government plans be resolved to the extent practical."<sup>14</sup> The BLM thereafter defined an inconsistency as anything that "cannot be resolved or reconciled where state and local plans conflict with federal law." The state strongly asserts that this interpretation does not fully recognize nuances of the consistency requirement, especially involving discretionary planning decisions of the BLM.

The state recognizes that federal law requires certain decisions and establishes parameters within which those decisions can be made. However, the BLM retains considerable discretion within these legal sideboards. State and local governments cannot demand that BLM act outside these sideboards, but when state and local governments' policies pertain to areas within BLM's lawful discretionary decision space, BLM is obligated to make its plans consistent with state and local policies to the maximum extent possible. Thus, it is inappropriate to dismiss state recommendations that fall within BLM's legally prescribed discretion simply because BLM disagrees with the balance struck by the state. To assume that BLM's discretionary choices constitute federal law has the immediate effect of determining that state plans, programs and policies which strike a different balance yet accomplish the same purpose as the BLM's choice are, a priori, in conflict with federal law. Instead, the state asserts that if its recommendations strike a slightly different balance between competing resource demands and this balance is within BLM's lawful discretionary decision space, the BLM must endeavor to make its final decision consistent with state and local government policies.

#### *Request of the State:*

The State of Utah provided a consistency review just prior to the 2008 oil shale and tar sands Record of Decision. The state indicated the decision was generally consistent with state law, policy, plans and procedures. Within the decision space laid out by the alternatives within the DPEIS, the no-action alternative, i.e. the status quo, would remain consistent with state and local plans. Other alternatives may not be. Fundamentally, the decision space allowed BLM in this matter is limited. EPACT 2005 requires the creation of a commercial leasing program for oil shale and tar sands within 18 months of enactment. The State of Utah supports this, and found the efforts of BLM in 2008 to be consistent with its laws, plans, policies and procedures. The state is not asking the BLM to step outside the law in retaining the status quo, and BLM has not demonstrated any information which would require a decision different from that made by BLM in 2008. Therefore, the BLM can easily accommodate the state's request that the Record

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<sup>13</sup> See generally the 2008 RMP efforts.

<sup>14</sup> Vernal RMP EIS, p. 5-17



of Decision in the current analysis reflect consistency with the state's position. BLM should simply adopt the no action alternative at this time.

### **The BLM Relies on Outdated Information on Oil Shale and Tar Sands Resources in Utah**

Although the BLM cites the U.S. Geological Survey reassessment of oil shale resources in Colorado, Utah, and Wyoming as one important reason for reevaluating the allocation decisions in the 2008 PEIS, the BLM did not use this new information in its analysis of the most geologically prospective resources. The DPEIS simply carries forward the data used for the 2008 PEIS. The 2012 PEIS would greatly benefit from the incorporation of new USGS resource assessments and new oil shale data resource data published by the Utah Geological Survey in 2008.

This omission of new data is extremely troubling and calls into question both the validity of BLM's allocation decisions and whether the BLM took the requisite hard look for purposes of NEPA. Despite its insistence that updated geological assessments were important for improved allocation decisions in the 2012 PEIS, the BLM instead demonstrates an almost total disregard for this new information. For example, the BLM relied on digital data provided by the BLM Utah State Office rather than data from USGS or UGS.<sup>15</sup> Oil shale data for the 25 foot thick, 25 gallon per ton resource standard used in the 2008 PEIS came primarily from older reports focusing on the southeastern part of the Uinta Basin. Newer USGS and UGS studies include complete data sets spanning the entire Uinta Basin.<sup>16</sup>

The DPEIS states that "(t)he BLM considered this new (USGS) information and has determined that while the new data should inform and update the 2012 PEIS effort, particularly with respect to information pertaining to the 2008 study area, the boundaries defining the in-place assessment do not represent the most geologically prospective areas of the Green River Formation located in the...Uinta...Basin...(T)he PEIS will not employ the USGS boundary to define the study area."<sup>17</sup> The BLM discusses at some length why it did not consider the increases found for estimated total in-place oil in the Piceance Basin USGS Oil Shale assessment,<sup>18</sup> but fails to justify why similar assessments for the Uinta and Green River Basins were not incorporated.

The BLM does not include reference citations in the text, map, or table identifying the geologically most prospective areas in Utah for oil shale;<sup>19</sup> however, UGS is certain the data described comes from preliminary information provided by the agency for the 2008 PEIS and does not reflect updated information developed by either UGS or the USGS. The DPEIS references Tabet (2007) as the source of oil shale and tar sand resource data for oil shale lands in

<sup>15</sup> Draft PEIS, Chapter 1, 1.2, pg. 1-10, footnote 4.

<sup>16</sup> Vanden Berg, 2008; UGS Special Study 128; USGS 2010b, *Oil Shale Resources of the Uinta Basin, Utah and Colorado*, National Oil and Gas Assessment Project, Digital Data Series DDS-69-BB.

<sup>17</sup> Draft PEIS, Chapter 2, 2.5.1, pg. 2-77.

<sup>18</sup> The BLM quoted the assessment as saying "much of this previously unassessed resource is of low grade and unlikely to be developed." *Id.*

<sup>19</sup> Draft PEIS, Chapter 2, 2.3, pp. 2-13 to 2-16.



Utah.<sup>20</sup> These references to information provided by a UGS senior geologist in 2007 confirms that the resource data used for the 2012 DPEIS came from information provided by the agency for the 2008 PEIS. This information, as even the BLM acknowledges, is out-of-date and been replaced by information from more recent UGS and USGS resource assessments.

It is disturbing that the BLM employed few people with geological and mining engineering backgrounds in the analysis of the most geologically prospective areas for the 2012 DPEIS.<sup>21</sup> It appears that the BLM chose to update the resource picture without the assistance of suitably trained personnel. The only geologist employed in the current effort evaluated paleontological resources, not OSTs resources. This demonstrates a biased reevaluation by BLM of the issues and impacts from OSTs leasing. It also violates the NEPA requirement that insures "environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." (emphasis added)<sup>22</sup>

### **The Draft PEIS Fails to Adequately Analyze Oil Shale Technologies**

The DPEIS relies heavily on outdated information regarding oil shale and tar sands development technologies and in doing so, fails to provide the kind of comprehensive information required by NEPA for proper decision making.

CEQ regulations are quite clear about the standards required under NEPA for EISs. According to Sec.1500.1 (b)

"...information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."

Because an EIS is used to plan actions and make decisions and must be supported by evidence that the agency has made the necessary environmental analyses,<sup>23</sup> it must contain the most accurate, up-to-date information available. Based on our extensive discussions with oil shale and tar sands industries, the DPEIS is clearly deficient and shows little to no coordination with industry. This may be a product of the backgrounds of the DPEIS contributors, where there is no evidence of industry or development background.

The BLM admits that "some of the information on the environmental consequences of oil shale development...is based on past oil shale developments. For purpose of this analysis, in the absence of more specific information of the oil shale technologies to be implemented in the future and the environmental consequences of implementing those technologies, information derived from other types of development... was used."<sup>24</sup> (emphasis added).

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<sup>20</sup> *Id.*, 2.3.1, pg. 2-20, footnote 4: Appendix A references.

<sup>21</sup> Draft PEIS, Chapter 8.

<sup>22</sup> 40 CFR 1500.1.

<sup>23</sup> 40 CFR §1502.1.

<sup>24</sup> Draft PEIS, Chapter 4, pg. 4-1.



Consultation and coordination with industry by the BLM is critical to the effective and unbiased analysis of the environmental consequences as well the economic benefits of oil shale and tar sands development. Based upon the previous decisions of the BLM, companies have invested hundreds of millions of private capital in technology, permitting, construction, and processing of oil shale and tar sands. The willingness of the state and private landowners to encourage this development in Utah has produced a highly sophisticated, successful, privately funded and well-capitalized oil shale and tar-sands industry in the state.

The BLM qualifies its analysis of oil shale and tar sands technologies by stating that the information on these technologies is presented for the purposes of general understanding and doesn't define the range of possible technologies that might emerge in the coming years.<sup>25</sup> This reflects a lack of due diligence on the part of the BLM. There is information available on newer, cutting-edge technologies that have moved from the RD&D phase into commercial scale development. BLM's reliance on outdated or general descriptions of the technology and its environmental impacts when there is ample information available on the newest developments in the industry contravenes NEPA's implementation requirements for EISs.<sup>26</sup> Appendix A references six oil shale projects in Utah from the late 1960s-the mid 1980s and cites these projects as a "wealth of resource, engineering, and baseline environmental data that will be useful in future efforts to develop oil shale resources."<sup>27</sup> While past experience may be useful for the analysis of the impacts of oil shale technologies, it is also important to include analysis of the innovative technologies currently in use that seek to resolve some of the environmental concerns raised by these earlier projects. Relying on technological examples in any industry (e.g. computing for example) from years back simply does not meet the requirement of NEPA to consider the best information available.. This is true especially in the oil shale and tar sands industries present in Utah.

An examination of Chapters 4 and 5 of the PEIS, along with the accompanying references, shows that the BLM did little research on newer technologies and did not make personal contact or mention any coordination with a single representative from industry. This is troubling to the state, since the Preferred Alternative relies on proven success through RD&D projects before allocating additional lease lands. A willingness to communicate and work effectively with industry will be critical under any of the alternatives, but especially under an RD&D driven alternative.

For example, BLM's analysis of the EcoShale™ In-Capsule Technology developed by Red Leaf Resources was based solely on information derived from Red Leaf's website.<sup>28</sup> Employing a team of researchers devoted to addressing reasons to exclude lands from commercial development while limiting technology and industry research to an effective 'google search' demonstrates BLM's fundamental incapability to work with industry.

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<sup>25</sup> *Ibid.*

<sup>26</sup> 40 CFR §1502.2 (g) "Environmental Impact Statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."

<sup>27</sup> DPEIS Appendix A, pg. A-21.

<sup>28</sup> *Ibid.*, A.5.3.7, pg. A-87.



A second example is the information regarding the development of Enefit's RD&D lease at the White River Mine. This DPEIS relies heavily on findings from a 2007 EA for OSEC's proposed development activities at the same site. The only update BLM provides for the purpose of its analysis is that Enefit will employ its own version of the proposed underground mining and aboveground retort technologies based on its Enefit280 plant under construction in Estonia.<sup>29</sup> BLM provided no comparative analysis between the Enefit280 process and the ATP retort process the agency evaluated for the purposes of the 2007 EA. It also fails to mention that the Enefit280 plant is possible only due to the commercial success of Enefit's parent company producing energy from oil shale since before 1950. Framing Enefit's successes and technology as "Enefit280 plant under construction" further shows BLM's bias and active efforts to portray the industry as nascent while in fact it has been functioning successfully and economically outside of the country. This demonstrates that the leading reason that oil shale and tar sands have not been proven commercially is due to the efforts and bias of BLM; not the lack of technology as BLM asserts.

The Utah Division of Oil, Gas and Mining (DOGM) recently granted Red Leaf a permit to begin commercial scale oil shale production in the Uintah Basin. Following a successful pilot test of its EcoShale technology, the company will commence oil shale operations on 1,500 acres in the Uintah Basin on state owned school trust lands. Enefit American Oil, a subsidiary of an Estonian energy company with 50 years of experience commercially producing energy from oil shale, acquired the Utah-based Oil Shale Exploration Company (OSEC) in March of 2011. Eesti Energia, the parent company of Enefit, recently announced it will conduct a commercial study of the application of its Enefit retort process to operations at the White River Mine.

These companies report that their new technology uses less water and result in fewer environmental impacts than the process technologies of the 1980s. For example, the EcoShale technology utilizes low temperatures for heating and does not require process water. The Enefit140 retort process, currently in use in its Estonian facilities and the predecessor to the Enefit280, uses no water, runs on organic waste, and emits significantly lower CO<sub>2</sub> emissions.<sup>30</sup> While the BLM acknowledges that these two companies are planning commercial production in the Uintah Basin in the near future, BLM fails to examine these technologies in any detail or evaluate their assertions of reduced environmental impacts. The agency instead relies on assumptions based on old data.<sup>31</sup>

This omission is serious. According to regulations for the implementation of NEPA:

*"If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."*<sup>32</sup>

BLM's failure to include any kind of meaningful consideration of current oil shale and tar sand technologies and their environmental impacts is a serious breach of its responsibility to provide thorough, unbiased analyses in its EISs. CEQ regulations are very clear that EISs shall

<sup>29</sup> *Ibid*, A.5.3.34, pg. A-75.

<sup>30</sup> <https://www.energia.ee/en/oil/oilandgas/enefit140>

<sup>31</sup> *Ibid*, Chapter 4, 4.1, pg. 4-2.

<sup>32</sup> 40 CFR 1502.9(a).



serve as the means for assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

The state strongly supports the development of oil shale and tar sands resources and recognizes the significant contribution this development will provide Utah's economy. Utah contains some of the richest oil shale reserves in the world. Unconventional fuels such as oil shale and tar sands are an important component of Governor Gary Herbert's 10-year Strategic Energy Plan for the state.<sup>33</sup> Energy development attracts new jobs, capital investment, and economic development opportunities for the state.

Information gathered by the Utah Office of Energy Development (OED) bears this out. Enervit has invested over \$100 million dollars to bring its commercially proven technology to Utah<sup>34</sup> and has indicated it will invest more if given the opportunity to develop resources on public lands. Questerre Energy Corporation recently signed a letter of intent to invest \$40 million in Red Leaf and their EcoShale In-Capsule technology, citing the success of the Utah pilot project.<sup>35</sup> As recent as April 2012, the major French Oil Company Total entered into a \$200 million Joint Venture with RedLeaf to further commercial scale operations.<sup>36</sup> In March of 2012, the Uintah Transportation Special Service District awarded a \$9 million asphalt paving contract to surface the first 17 miles of a road to the Uintah-Grand County line with Plant Mixed Oil Sand Asphalt (PMOSA), a heated blend of Uintah county aggregate and tar sands. Additional paving contracts using PMOSA demonstrate a growing commercial demand for tar sands.

OED also performed an informal survey of companies who had either previously invested in oil shale and tar sands development or had indicated a strong interest in doing so in the future. Survey results showed that 99.7% of the investment dollars represented in the survey believed that the primary impediment to developing oil shale and tar sands was uncertainty surrounding access to BLM lands, ranking overwhelmingly higher than lack of technology, capital, or access to state or private lands. With over \$190 million of recent (< 5 year) investment and over \$930,000,000 of planned (5< year) investment represented in the survey, OED calculates that implementing the Preferred Alternative, with its RD&D emphasis and limited acreage available for leasing, would prevent approximately \$3.26 billion dollars in investment in the state for oil shale and tar sands development.

#### **Availability of Water Supposition vs. Fact**

The characterization of water resource use in the DPEIS study area lacks the clarity necessary to satisfy the requirements of NEPA, which stipulates that "statements shall be concise, clear, and to the point."<sup>37</sup> Broad statements and the confusing application of water use

<sup>33</sup> Energy Initiatives and Imperatives: *Utah's 10-Year Strategic Energy Plan*, pg. 14.

<sup>34</sup> [https://www.energia.ee/-/doc/10187/pdf/concern/Interim\\_report\\_2011\\_Q3\\_eng.pdf](https://www.energia.ee/-/doc/10187/pdf/concern/Interim_report_2011_Q3_eng.pdf)

<sup>35</sup> "Red Leaf Resources Get Green Light for Oil Shale Project in Utah", April 5, 2012, <http://www.centerwest.org/publications/oilshale/7new/?p=450>

<sup>36</sup> <http://www.marketwatch.com/story/red-leaf-resources-inc-total-ep-usa-oil-shale-llc-announce-a-joint-venture-for-oil-shale-production-project-2012-04-18>, Red Leaf Resources, Inc & Total E&P USA Oil Shale, LLC announce a joint venture for oil shale production project, Marketwatch website accessed 5/1/2012.

<sup>37</sup> 40 CFR § 1502.1.



terms cloud and complicate the analysis. The state asserts BLM's data lacks the necessary confidence to properly evaluate the impact of oil shale and tar sands on water allocations under the Upper Colorado River Basin Compact, given the lack of clarity contained in the agency's descriptions of water availability and usage.

The BLM describes water use in the Colorado River Basin as "highly developed, allocated, and regulated."<sup>38</sup> This sentence is misleading. Although the statement is true for the lower-basin states, it misrepresents conditions along the main stem of the Green and Colorado Rivers in Utah. None of the Upper Basin States have developed all of their Colorado River Compact water, with the possible exception of New Mexico. Utah has yet to deplete or consume roughly 300,000 acre-feet of its approximately 1.37 million acre-feet of water under the Colorado River Compact, as evidenced by BLM's own table included in the DPEIS.<sup>39</sup>

The BLM should make it clear in its discussion of water allocation under the Compact that the 6 million acre feet of water available both physically and under the provisions of the Compact is the quantity of water the Upper Basin States may deplete or consume.<sup>40</sup>

While the BLM defines the terms "diversion" and "consumptive use" in the DPEIS, it does not define the term "demand." It appears the BLM uses the term synonymously with diversion, which is not correct. Since the BLM does not provide a definition of "demand," the use projections on two of the tables are misleading<sup>41</sup> and conclusions regarding supply and demand are faulty.<sup>42</sup>

The Utah Water Demand Table (3.4.1-3) shows the projected 2020 and 2050 demand will be greater than the 23% allocation of 6 million acre-feet available for the Upper Colorado River Basin under the compact.<sup>43</sup> Without a definition of supply or demand, this comparison is meaningless. The 6 million acre feet of water available for the upper basin states is not a limitation on diversion or demand, but rather a limitation on the allowable depletion or consumption. Statements regarding water use<sup>44</sup> make it appear that there is no water available to develop in the Upper Basin states. Utah has not fully used its allocation of the Colorado River Compact and, as the BLM indicates in its 2030 projections, even if consumptive uses are on the high end, Utah will still have a 268,425 acre-foot surplus for consumptive use.<sup>45</sup>

#### **The BLM Uses Outdated Assumptions Regarding Water Usage for Oil Shale and Tar Sands Development**

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<sup>38</sup> Draft PEIS Chapter 3, 3.4, pg. 3-61.

<sup>39</sup> *Ibid.* Table 3.4.1-3, pg. 3-67.

<sup>40</sup> *Ibid.* 3.4.1.1, pg. 3-61.

<sup>41</sup> *Ibid.*, Tables 3.4-1-2 and 3.4.1-3, pp. 3-67-3-72.

<sup>42</sup> *Ibid.* pp. 3-73, 3-74, 3-75.

<sup>43</sup> Footnote "j", *Ibid.*, pg. 3-70.

<sup>44</sup> *Ibid.* pg. 3-73.

<sup>45</sup> *Ibid.*, Table 3.4.1-2, pg. 3-67.



The BLM states that “although a certain amount of water is calculated to be available in...Utah..., this does not imply that the water is readily or physically available for development.”<sup>46</sup> Supporting statements include:

- Oil shale basins and STSAs are situated in areas much smaller than the Upper Colorado
- Hydrologic basin on which water availability was calculated
- Storage and capture infrastructure may not be available in oil shale basins and STSAs
- Developers would have to acquire water rights either through transfer or purchase, since most of the water has been claimed
- Water use would be regulated under a number of state and federal regulations, as well as instream flow requirements to protect endangered fish<sup>47</sup>

These broad statements would apply to most water use in the Upper Colorado Basin and should not be used as justification for wholesale dismissal of water availability for oil shale and tar sands development.

In its discussion of water use for oil shale development, the BLM bases its assumptions on outdated information.<sup>48</sup> Its assessment assumes 2.6 to 4.0 bbl of water per barrel of oil for surface mining with a surface retort and underground mines with surface retorts and 1 to 3 bbl of water for in situ projects. Current technology utilizes 1 to 1.5 barrels of water per barrel of oil. New technologies do not use water for the actual extraction of the oil from the shale but primarily for dust control.

Recently permitted oil shale operations in Utah use considerably less water than the BLM assumes for purposes of the PEIS. According to Red Leaf’s permit “most water will be consumed for construction of the process capsules and for dust control. The EcoShale InCapsule process itself is a net producer of water.”<sup>49</sup> Red Leaf’s petroleum removal process extracts water from the oil shale. Removed as water vapor, condensed, recovered and then put to use in mining operations, this process water will supply approximately one third of the total project water demand. All water captured, recovered, or withdrawn for use on the project is to be used on site.<sup>50</sup> The DPEIS assumption of 1-3bbl water/bbl oil produced for a 30,000-50,000bbl/day in situ plant does not take into account the different water requirements for Red Leaf’s mining technology.<sup>51</sup>

Enefit’s retorting process itself does not require water, although water is needed for cooling, upgrading, power production, and dust control.<sup>52</sup> In considering the impacts to water resources from Enefit’s White River Mine, the BLM references its 2007 EA for OSEC’s proposed mining operations at the mine site.<sup>53</sup> Water requirements for the OSEC operations,

<sup>46</sup> *Ibid.*, pp. 3-74 and 3-75.

<sup>47</sup> *Ibid.*, pg. 3-75

<sup>48</sup> Draft PEIS, Chapter 4, 4.5.1.2, pg. 4-33.

<sup>49</sup> Utah Division of Oil, Gas, and Mining. Red Leaf Large Mining Operation Application, Appendix K. Approved March 14, 2012.

<sup>50</sup> *Ibid.*

<sup>51</sup> Draft DPEIS, Chapter 4, Table 4.5.2-1, pg. 4-43.

<sup>52</sup> <https://www.enefit.com/en/oil/projects/usa>

<sup>53</sup> Draft PEIS, Appendix A, A.5.3.4.3, pg. A-79.



based on the use of an ATP retort, are likely not comparable to those proposed by Enefit and again shows that BLM has failed to cooperate and discuss these vital issues with industry. The state strongly suggests that BLM cooperates with industry and again asserts that the DPEIS is deficient without these efforts.

The anticipated decline in available Colorado River water is based in part on the development of water for oil shale and tar sands development.<sup>54</sup> This decline appears to be based on the water requirements of older technologies and should be revised accordingly.

The BLM appears to believe that water is only available through retiring agriculture water rights.<sup>55</sup> In Utah currently, there are approved water right applications totaling well in excess of 10,000 acre-feet of water for the express purpose of developing oil shale and tar sands.

The assumptions regarding likely water sources for tar sands development on Asphalt Ridge are flawed.<sup>56</sup> Water in the Green River, which flows past the southern tip of Asphalt Ridge, is available for use. Until recently, there was an approved application to divert water from the Green River for tar sands development at Asphalt Ridge. The application is held by the Uintah Water Conservancy District, which plans tar sands development as a future use for the application.

#### **The DPEIS Does Not Fulfill the Requirements of a Commercial Leasing Program as Required by the Energy Policy Act of 2005**

Section 369 of the Energy Policy Act of 2005 (EPACT) states “not later than 18 months after the date of enactment of this Act... the Secretary (of Interior) shall complete a programmatic environmental impact statement for a commercial leasing program for oil shale and tar sands resources on public lands, with emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming.”<sup>57</sup> Like the 2008 PEIS before it, the 2012 Oil Shale Tar Sands PEIS seeks to simply identify lands “available for application for leasing” rather than completing an analysis that would make lands available for commercial leasing. The DPEIS, contrary to the intent of Congress in EPACT, does not actually designate lands available for commercial leasing or establish the necessary guidelines or regulations for a commercial oil shale and tar sands leasing program by the BLM. The Preferred Alternative, in fact, takes a step backwards, constraining commercial leasing by:

- excluding large swaths of geologically prospective lands from application for leasing;
- demanding unnecessary, burdensome NEPA analyses that go beyond those required for conventional oil and gas and surface mining leasing programs; and
- predicated commercial leasing on the successful application of oil shale technology through an RD&D leasing program.

<sup>54</sup> Draft PEIS, Chapter 4, 4.5.2.2, pg. 4-48.

<sup>55</sup> Draft PEIS, Chapter 4, pg 4-34-4.35; Chapter 5, 5.5.1.2, pg 5-27..

<sup>56</sup> Draft PEIS, Chapter 5, 5.5.2.2.1, pg 5-37.

<sup>57</sup> Public Law 109-58, “Oil Shale, Tar Sands, and Other Strategic and Unconventional Fuels Act of 2005,” Section 369 (d)



### **Geologically Prospective Lands Excluded From Application For Leasing**

The Preferred Alternative removes geologically prospective lands due to perceived conflicts with sage grouse core or priority habitat and lands with wilderness characteristics (LWCs). While the Settlement Agreement ("Agreement")<sup>58</sup> between the BLM and environmental plaintiffs that resulted in the revision of the 2008 PEIS ROD required the BLM to analyze the environmental effects of an alternative that excluded these lands from oil shale and tar sands leasing, the Agreement did NOT require the BLM to select this alternative. As discussed above, BLM's analysis of these two factors is replete with errors in fact and policy. In fact, in light of the requirements of EPACT, the Preferred Alternative nullifies the intent of Congress to establish a commercial leasing program.

### **Unnecessary, Burdensome NEPA Analyses That Go Beyond Those Required For Conventional Oil And Gas And Surface Mining Leasing Programs**

The BLM treats oil shale and tar sands leasing differently than oil and gas leasing and coal leasing by requiring additional levels of analysis before commencing commercial leasing. The agency states "it anticipates, to the best of its knowledge, that the surface disturbing activities involved with other types of mineral development are comparable to those that may result from oil shale and tar sands development."<sup>59</sup> It also says that it anticipates that oil shale development will proceed in a three-step decision-making process similar to that used for federal on shore oil and gas.<sup>60</sup> Then it turns around and says that due to the experimental nature of oil shale and tar sands technologies, the BLM believes the stages of NEPA compliance will be different from oil and gas. It goes on to explain that "(i)f and when applications to lease are received and accepted, the BLM will conduct additional required analyses, including consideration of direct, indirect, and cumulative effects, reasonable alternatives, and possible mitigation measures, as well as assessment of level of development that may be anticipated. (Based on this analysis of future lease applications), the BLM will establish general lease stipulations and best management practices" for oil shale and tar sands leasing and development.<sup>61</sup>

These extra levels of environmental analyses are unnecessary and place an undue burden on companies wishing to develop oil shale and tar sands resources. The proposed process is so cumbersome and fraught with uncertainty that few companies could afford to secure investment and dedicate capital resources to development efforts, especially given the added possibility of additional delays due to protests or legal challenges. This lengthy process defeats the intent of EPACT to construct a commercial leasing program, a program originally scheduled to be in place by 2011.

There are adequate federal and state regulations to deal with the impacts of oil shale and tar sands operation that protect water quality, air quality, and other resource values. Oil shale and tar sand developments involve well-defined, basic extraction, processing, and upgrading

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<sup>58</sup> Civil Action No. 09-cv-00085-JLK, February 15, 2011.

<sup>59</sup> Draft PEIS, Chapter 4, pg. 4-1.

<sup>60</sup> Draft PEIS, Executive Summary, pg. ES-5.

<sup>61</sup> *Id.*



techniques that have been in use in Australia, Brazil, Canada, China, Estonia, and Ireland. Oil shale and tar sands enjoy commercial success in Canada and Estonia and have been produced there successfully for many years. Similar extraction and production technologies have undergone RD&D testing in the United States since the 1960s. The impacts from developing these resources should not require further BLM analysis or research to understand the environmental impacts of oil shale and tar sands before leasing can take place.

Oil shale and tar sand leasing and associated development activities have occurred on Utah state lands for many years. These operations have proceeded in a manner that provides adequate protection of the environment under state regulatory programs sanctioned by the Office of Surface Mining (OSM) and the Environmental Protection Agency (EPA). The BLM gives no reason why similar activities, safeguarded by the same level of environmental protection, could not be carried out on federal lands absent further NEPA or BLM analysis. The BLM correctly states that it would have ample opportunities to assess the impacts of OSTs development plans with further "NEPA analysis and other appropriate review" "before approval of a lease and subsequent plan of development on a lease."<sup>62</sup> More RD&D and NEPA analysis is not needed now or before BLM proceeds to a commercial OSTs leasing program.

#### **Commercial Leasing Predicated On the Successful Application Of Oil Shale Technology Through An RD&D Leasing Program**

The BLM declares in the Preferred Alternative that the agency "would like to maintain focus on RD&D projects."<sup>63</sup> This is not the mandate of EPACT, which was to proceed to commercial leasing. Congress did not ask the BLM to determine whether it wished to have commercial leasing or not. As was stated before, a number of companies have initiated pilot projects on state and private lands in Utah for years. One company, Red Leaf, is confident that its technology will lead to oil shale production on a commercial scale. It requested and received a permit from the Utah Division of Oil, Gas, and Mining (UDOGM) to proceed with commercial operations. The justification for seeking more RD&D data is not valid in the case of oil shale companies who might seek federal leases in Utah.

#### ***BLM's RD&D Leasing Program***

The BLM declares in the Preferred Alternative that the agency "would like to maintain focus on RD&D projects."<sup>64</sup> The state finds this unacceptable, as the previous RD&D Leasing Program was not only excessively burdensome, but not economically attractive and, as a result, effectively killed interest in development of oil shale and oil sands on BLM land. As an example, the first round of RD&D leases offered more than 5,000 acres for commercial development if a technology was deemed 'worthy' by BLM. The second round decreased the amount 'awarded' to RD&D lease applicants to less than 700 acres, as well as increased the administrative oversight and bureaucratic burden. Quite simply, 700 acres is not enough area for a successful commercial

<sup>62</sup> Draft PEIS, Chapter 1, pg. 1-1.

<sup>63</sup> Draft PEIS, Executive Summary, pg. ES-9.

<sup>64</sup> Draft PEIS, Executive Summary, pg. ES-9.



project, as evidenced by the examples throughout these comment. In addition, BLM placed approximately 50% of Enfit's preferential lease area as 'off-limits' to development despite having identified this as an area which should be awarded to the RD&D lease holder.

This is a clear example of the disregard for the realities faced by industry and shows that BLM is not truly interested in understanding the requirements of a successful oil shale industry. A simple coordination with industry during the DPEIS process would have borne this out, but BLM showed no effort in this regard. The result is massive regulatory uncertainty that shadows the industry and prevents successful economic development. It is further evidence that the reason that there is less commercial success in the United States is not due to lack of technology, as asserted in the DPEIS; instead it is due to the regulatory uncertainty created by efforts like this DPEIS.

#### **BLM's Deal With Plaintiffs In The Settlement Agreement Is At Variance With The Requirements Of EPACT**

The BLM in many ways abrogated its responsibilities under EPACT when it signed the Settlement Agreement. The Agreement prohibited the BLM from issuing a call for expression of leasing interest for oil shale or offer lands for competitive tar sands leasing or expressions of interest in tar sands leasing prior to January 15, 2013,<sup>65</sup> well after the December 2012 deadline for issuance of an ROD. This defeated the stated purpose behind the original 2008 PEIS for establishing a commercial leasing program. The Agreement effectively precluded consideration of areas of interest to industry for the purposes of the 2012 PEIS while at the same time giving disproportionate weight to "nominations" of areas precluded from oil shale and tar sands leasing by environmental interests. This turns the intent of EPACT on its head.

The labyrinthine process created in this DPEIS makes it nearly impossible for companies to develop oil shale resources on public lands. How can interested parties make applications for commercial leasing of oil shale in the absence of a commercial leasing program? If BLM delays further oil shale leasing analyses until companies nominate lands for leasing and BLM has no mechanism to allow companies to nominate lands for leasing, it is difficult to see how there can be commercial level oil shale leasing.

This is troubling for a number of reasons. NEPA requires agencies to assess the direct and indirect effects of a proposed action.<sup>66</sup> It also requires analysis of the cumulative impacts of a proposed action.<sup>67</sup> The BLM proposes to complete the analyses for areas nominated for commercial OSTs leasing after the ROD. Since this information is critical to an informed decision on the allocation of lands available for leasing and should be considered in the DPEIS, the BLM effectively signed away its statutory responsibility to properly analyze a major federal action that required an EIS under NEPA when it entered into the Settlement Agreement.<sup>68</sup>

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<sup>65</sup> Civil Action No. 09-cv-00085-JLK, 12, February 15, 2011.

<sup>66</sup> 40 CFR 1508.8.

<sup>67</sup> 40 CFR 1508.7

<sup>68</sup> See 40 CFR 1508.18 (b) (3) as it applies to adoption of a program to implement a specific statutory program, specifically EPACT.



In contrast, the BLM incorporates information related to lands with wilderness characteristics inventoried over five years ago. It proposes to include priority areas for sage grouse in its lands for exclusion from leasing with no supporting evidence for the selection of these core areas. Yet it fails to consider current evidence of interest in lease areas; in fact, it prevents the consideration of this interest. The level of interest in oil shale and tar sands lease areas has a direct and indirect effect on oil shale development. Denial of consideration of industry interest has cumulative impacts both on the development oil shale and tar sands technologies as well as the implementation of a commercial oil shale tar sands leasing program.

The Agreement did not require the BLM to predicate its leasing program on nominations of lands for leasing, nor did it prevent the BLM from establishing a commercial leasing program subsequent to the January 2013 date. Its selection of the Preferred Alternative indicates that the BLM did not seriously consider other options.

By entering into an Agreement that effectively foreclosed the opportunity for industry to express an interest in prospective areas or nominate appropriate areas for leasing prior to a ROD on the FPEIS and creating a situation in which the agency claimed it could not even consider such areas for the purposes of analysis in the DPEIS, the BLM :

- Violates the express provisions of EPACT to establish a commercial leasing program for oil shale and tar sands; and
- Violates NEPA by segmenting issues to a degree that it is impossible for the agency to take the requisite hard look at the environmental impacts of a commercial leasing program.

#### **Segmentation of Issues Violates NEPA and Contravenes Intent of EPACT**

The BLM cannot properly analyze the impacts from oil shale and tar sands leasing because the agency has failed to:

- consider expressions of interest in oil shale and tar sands areas
- establish royalties, fees, rentals, bonus, and other payments for leases
- consider the support and interest in Utah for the development of oil shale and tar sands resources
- establish a program to facilitate land exchanges to consolidate land ownership and mineral interests into manageable areas.<sup>69</sup>

These actions are not only required by EPACT, they are necessary elements of a commercial leasing program. The 2008 PEIS provided the environmental analysis required by EPACT for a commercial leasing program, with the assumption that within a carefully prescribed time period the other critical components of the program would be in place. Four years later, these critical pieces remain in a state of flux.

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<sup>69</sup> Public Law 109-58, "Oil Shale, Tar Sands, and Other Strategic and Unconventional Fuels Act of 2005," Section 369 (e), (n), (o).



*Consider expressions of interest in oil shale and tar sands areas*

This was discussed at length earlier.

*Establish royalties, fees, rentals, bonus, and other payments for leases*

A recent oil shale rulemaking agreement<sup>70</sup> allows the BLM to change royalty rates for oil shale and tar sands leases, with the notice of proposed rulemaking (NPR) due out after the DPEIS comment period closes. The BLM states that “determining commercial royalty rates”<sup>71</sup> is outside the scope of the congressional requirements of EPACT for the BLM’s programmatic analysis for a commercial OSTs leasing program. By removing and replacing the current royalty rate and creating even greater uncertainty for industry, the BLM, as it did with the Settlement Agreement, chose to further erode the formation of a commercial oil shale and gas leasing program,

*Consider the support and interest in Utah for the development of oil shale and tar sands resources*

The BLM acknowledges that state interest in leasing is relevant, stating “it has been suggested by one of the cooperating agencies, and seconded by others, that BLM develop an alternative that would allow for larger scale leasing and development in Utah and Wyoming where the majority of the cooperators support a program that makes more federal oil shale and tar sands resources available for application for future leasing, while limiting development in Colorado, where the majority of cooperators favor a more cautious approach to leasing and development.”<sup>72</sup> Governor Herbert has made it quite clear that Utah favors this approach.<sup>73</sup> However, The BLM dramatically reduced the acreage of lands allocated as available for leasing in Utah in the Preferred Alternative in apparent conflict with the high interest demonstrated by the state for increasing oil shale and tar sands development.

*Establish a program to facilitate land exchanges to consolidate land ownership and mineral interests into manageable areas*

The BLM admits it has no plans in place for land exchanges. The DPEIS contains no discussion of the ways BLM might facilitate such exchanges, either through requests for nominations for lands to exchange, determination of which federal lands are available for exchange, extra staff and budgets to identify and expedite proposed exchange opportunities, or streamlined NEPA and land resource appraisals to foster quicker exchanges. The DPEIS simply avoids the subject by claiming that “the possible locations for such future exchanges are unknown at this time.”<sup>74</sup> Deferring or avoiding the identification of lands available for future exchange does nothing to move the BLM forward in facilitating or giving priority to land exchanges as required by EPACT.

The 2012 DPEIS was an ideal opportunity to remedy the lack of coordinated consideration of the cumulative impacts of these components on a commercial leasing program. Instead, the DPEIS segments these elements, removing them from even initial consideration, and

<sup>70</sup> Civil Action No.-09-cv-00091-JLK

<sup>71</sup> Draft PEIS, Chapter 1, pg. 1-13.

<sup>72</sup> Draft PEIS, 2.4.4, pg. 2-76.

<sup>73</sup> Utah Energy Initiative: A 10 Year Strategic Energy Plan, Pg. 7.

<sup>74</sup> Draft PEIS, Chapter 1, pg. 1-12.



cites the agency's self-imposed inability to weigh these essential factors as justification for scaling back the lands available for leasing even further than it did in the 2008 PEIS. By excluding these significant aspects of a commercial leasing program from analysis in the DPEIS, the BLM fails to properly examine the full range of impacts from oil shale and tar sands leasing as required by NEPA, and has improperly segmented the analysis of the proposal.

### **BLM Overstates the Amount of Land Truly Available for Leasing**

BLM overstates the availability oil shale lands by failing to discuss the potential for conflicting known uses. Much of the land proposed for availability for oil shale leasing is already leased for oil and gas, and projects are planned to develop those resources. It is nearly impossible for both developments to occur on the same piece of land. The discussion in the DPEIS does not adequately reflect the true status of lands available for oil shale development because of existing proposals. The BLM uses out-of-date (pre-2005) information and grossly underestimates levels of oil and gas drilling in the Book Cliffs area.<sup>75</sup> The DPEIS must be rewritten to discuss the conflict with oil and gas operations, discuss the minimal amount of lands available as a result for oil shale leasing in Utah in the next 20 years.

The DPEIS also needs to discuss making a suitable amount of lands available for oil shale and tar sands leasing in the face of the oil and gas development. As discussed above, the oil shale industry is ready to proceed, and the BLM must provide enough resource to allow this industry to flourish. Allowing this will reduce our reliance on foreign oil, create jobs and bring significant economic development to every state involved. The state suggests modifying the definition of the most geologically prospective oil shale lands in Utah to include resources to a depth of 3000 feet.

### **Conclusion**

The State of Utah appreciates the opportunity to work with the BLM on the development of active oil shale and tar sands industries in Utah, and stands ready to rework the DPEIS in order to do so. Specifically, we request that the BLM prepare the analyses requested by the state and local governments in Utah, and issue a Supplemental Environmental Impact Statement which discloses these new analyses to public scrutiny under the provisions of NEPA. The state also urgently requests the BLM to immediately request further time to complete these analyses from the Court, for the reason that the tight time frame originally set out has proven too narrow to meet the provision of substantive federal law. The state offers to support the BLM in this request.

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<sup>75</sup> Utah Division of Oil, Gas, and Mining drilling statistics by county for Duchesne and Uintah Counties for the years 2008 through 2011 give an average annual rate of 264 oil wells in Duchesne County (Diamond Mountain area) and 88 oil wells and 410 gas wells in Uintah County (Book Cliffs area). Using these updated average annual drilling rate figures for 20 years, rather than the incorrect 15 year planning level presented in Table 6.1.6-5, provides estimates of 5280 oil wells in Duchesne County (versus BLM's 76 oil wells) and 1760 oil and 8200 gas wells in Uintah County (versus BLM's 62 oil and 143 gas wells) as the expected amount over a 20-year planning horizon. Attachment A1, Section 6, Current Crude Source, pg A-109, needs to be revised to reflect current information on oil production levels, which have increased significantly in the last few years. For example, Utah is currently producing at least 57 to 58,000 barrels per day compared to the 43,000 barrels per day depicted in Figure 8. The discussion of PADD 4 does not reflect the new pipeline connecting Salt Lake City, Utah to the Las Vegas, Nevada market.

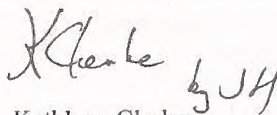


The State of Utah also respectfully formally informs BLM, pursuant to the terms of EPACT 2005, that it will not be bound by the artificial timeline set out in the Settlement Agreement providing that the amendments to the existing oil shale regulations will be offered for public comment on or about May 15, 2012, after the comment period on the DPEIS has closed. The BLM is required by EPACT 2005 to consider the views of the Governors of the states involved, and is required to consider the effects of the land allocation decisions and the regulatory structure simultaneously as part of those consultations. The land allocation decisions and the leasing and royalty structure are part and parcel of the total leasing program envisioned by EPACT 2005. The state will not allow the law which created these consultation requirements to be artificially segmented by actions of the BLM and non-governmental parties, no matter the forum employed by BLM to create this improper segmentation. The state will be offering the BLM substantive comment about the connection between the land allocation information in the DPEIS and the soon-to-be-announced new regulatory structure. The state will require the BLM to consider any such comments as part of the record in the final decision concerning the Record of Decision based upon the current DPEIS.

The State of Utah strongly supports the work done by the BLM which culminated in the 2008 Records of Decision, and will actively and vigorously oppose any amendments or other changes to those decisions. The state specifically requests the BLM to consider the other alternatives within the DPEIS in light of the rush to poor analysis occasioned by the ill-conceived timeline set out in the Settlement Agreement, and determine that more time is necessary for BLM to obtain sufficient information to make a reasoned decision. In light of the need for further information and analysis, and the need for a Supplemental EIS to provide this information to the public for review. Fundamentally, the state requests that BLM simply choose the No-action alternative, and affirm the earlier work.

Thank you for the opportunity to work with you to improve the land in Utah, and to provide for a healthy economy. Additional comment is attached as an Addendum and Technical Comments. Please feel free to contact myself for any further information that you may need.

Sincerely,

Handwritten signature of Kathleen Clarke in black ink, with a stylized 'K' and 'C' and the initials 'JH' to the right.

Kathleen Clarke  
Director



## **Addendum To State of Utah Comments**

### **Environmental Permit Requirements**

#### **Air Quality**

The state is heavily engaged in studies designed to identify potential adverse impacts on regional haze and winter ozone levels in the Uintah Basin. The state objects to the conclusory statements drawn from generalized information. The DPEIS indicates that PM<sub>2.5</sub> and ozone could rise above acceptable levels in the Uintah Basin if oil shale and tar sands development begins on a commercial scale.

The DPEIS, however, contains some pro forma references to state and federal regulatory means for addressing air quality issues, particularly in the Uintah Basin, that lack the specificity required for informed decision-making. Annual emission inventory for criteria pollutants and VOCs for counties is ten years old<sup>76</sup>. UDAQ recommends updating the emissions to most current available inventory.

Utah Division of Air Quality urges the BLM to identify best management practices (BMPs) for the reduction of PM, NO<sub>x</sub>, and VOC emissions from oil shale and tar sands operations. The Division also requests that BLM consider the cooperative efforts currently underway statewide and regionally to tackle the challenges presented by wintertime ozone. The results of these studies and cooperative partnerships are important for BLM's decision-making process on the allocation of areas available for oil shale tar sands leasing and should be part of the DPEIS analysis.

#### **Regulatory Mechanisms**

A Memorandum of Understanding (MOU) signed by the Department of Agriculture, Department of the Interior, and the Environmental Protection Agency on June 23, 2011, committed the signatory agencies to a clearly defined, efficient approach to compliance with NEPA regarding air quality and air quality values (AQRVs) in connection with oil and gas development on federal lands.<sup>77</sup> The MOU established procedures for assessing impacts related to NAAQs and AQRVs. The DPEIS referenced the MOU for GHG emissions<sup>78</sup> but failed to do the same for other criteria pollutants.

According to Section V.D. of the MOU<sup>79</sup>,

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<sup>76</sup> Draft PEIS, Chapter 3, 3.52, pp. 3-105-107.

<sup>77</sup> Memorandum Of Understanding Among The U.S. Department Of Agriculture, U.S. Department Of The Interior, And U.S. Environmental Protection Agency, Regarding Air Quality Analyses And Mitigation For Federal Oil And Gas Decisions Through The National Environmental Policy Act Process.

<sup>78</sup> Draft PEIS, Chapter 4, 4-6.1.1.1, pg. 4-57.

<sup>79</sup> Memorandum of Understanding, pg. 9.



*“...the Lead Agency (BLM) will complete and document supporting air quality and AQRVs analyses prior to (f)ederal oil and gas planning, leasing, or field development decisions.” (emphasis added)*

These air quality and AQRVs analyses should incorporate the most current data. The county annual emissions inventory data cited in the DPEIS is ten years old. The Utah 2008 Statewide Emission Inventory contains the latest data and is available on the UDAQ web site at: [http://www.airquality.utah.gov/Planning/Emission-Inventory/2008\\_State/08\\_State\\_List.htm](http://www.airquality.utah.gov/Planning/Emission-Inventory/2008_State/08_State_List.htm).

The state summary, last updated in November 2010, categorizes emissions for the six criteria pollutants by area source, non-road mobile, on-road mobile, point source, biogenics and wildfires:

([http://www.deq.utah.gov/search\\_results.htm?cx=003215417047777185873%3Asg4mqgvk-m&q=2008+emissions+inventory+county&cof=FORID%3A9](http://www.deq.utah.gov/search_results.htm?cx=003215417047777185873%3Asg4mqgvk-m&q=2008+emissions+inventory+county&cof=FORID%3A9)).

The inventory includes detailed annual emissions from point sources in each county ([http://www.airquality.utah.gov/Planning/Emission-Inventory/2008\\_State/2008\\_FormB\\_CountyDetails112210.pdf](http://www.airquality.utah.gov/Planning/Emission-Inventory/2008_State/2008_FormB_CountyDetails112210.pdf)) as well as from area sources ([http://www.airquality.utah.gov/Planning/Emission-Inventory/2008\\_State/2008\\_Area\\_revised113010.pdf](http://www.airquality.utah.gov/Planning/Emission-Inventory/2008_State/2008_Area_revised113010.pdf)).

UDAQ has pointed out this omission in previous comments. According to the MOU<sup>80</sup>, early in the NEPA process the lead agency will discuss with the agencies:

- information about the affected environment to include in the baseline assessment;
- methodology, assumptions, and scale of the analyses; and
- monitoring protocols and mitigation

The BLM has yet to include this important information in its air quality impact analysis. UDAQ requests the BLM update its data and utilize the 2008 emission inventory in its analysis for the DPEIS.

Monitored concentrations representative of the study area<sup>81</sup> reference concentration levels for PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>2</sub> from monitors in surrounding states, specifically the Grand Junction CO Powell Station and Rock Springs, WY station. Data from these monitors, located at some distance from oil shale/tar sands resources in Utah, do not provide the necessary specificity for an accurate accounting of emission levels in the Uintah Basin. UDAQ, through its 2012 Winter Ozone Study, is collecting air quality data from 20 fixed, distributed monitoring stations in the Basin and two air quality “super sites” in Roosevelt and Horsepool. Three permanent monitors in Fruitland, Roosevelt, and Vernal supply regional air quality information. Data from these sites should be considered in any analysis of air quality in the study area.

About 75% of all PM<sub>2.5</sub> found on UDAQ’s monitoring filters is created by secondary particulate formation, which occurs when precursor emissions, usually NO<sub>x</sub>, SO<sub>x</sub>, and VOC,

<sup>80</sup> *Ibid.*

<sup>81</sup> Draft PEIS, Chapter 3, Table 3.5.3-2, pp. 3-112-113.



react in the atmosphere to form PM<sub>2.5</sub>. Oil and gas operations emit precursor gases that contribute to the formation of PM<sub>2.5</sub> and oil shale development would likely do the same.

UDAQ recommends the BLM utilize the data from the aforementioned monitoring stations located in the Basin, incorporate this data into the FPEIS, and consider it in its Record of Decision. Any impact assessment for air quality from oil shale and tar sands development should contain the available emissions data from the Uintah Basin 2012 Ozone Study (see below). The preliminary results from this study, scheduled for release in July, will provide a more comprehensive picture of air quality conditions in the Basin. Given the challenges facing the Basin with ozone and PM<sub>2.5</sub>, the BLM should utilize the most up-to-date air quality information to make informed decisions on oil shale lease allocation decisions.

In addition, UDAQ requests the BLM reference the MOU Appendix "Modeling Approaches to Evaluate Air Quality for NEPA Decisions Regarding Federal Oil and Gas" in support of the requirements of Section V.D. The Reusable Modeling Framework (RMF) contained in the Appendix recommends that

*"(f)or future emissions, projections should be made from the base year to 10-15 years forward to examine the potential for maximum growth in the planning area."*

Emissions projections will apprise the BLM of potential air quality issues associated with commercial scale oil shale development and should be part of the air quality analyses for lease allocation decision-making.

#### ***Best Management Practices***

Normally, the state uses the New Source Review (NSR) program to regulate oil and gas emissions, with sources subject to Best Available Control Technology (BACT) review, modeling, and public comment before receiving a permit. To qualify for NSR, sources must meet a minimum threshold of emissions—5 tons per year of any criteria pollutant, less than 500 pounds per year of any single hazardous air pollutant, or less than 2,000 pounds per year of combined hazardous air pollutants. If the source emits less than the threshold they fall outside of NSR regulations (de minimis emissions).

In the Basin, many of the oil and gas emission sources, including wellheads and tanks, do not meet the NSR threshold and are not regulated.<sup>82</sup> RD&D oil shale projects will probably also not meet this NSR threshold. UDAQ and its partners in the Basin are working with stakeholders to determine the feasibility of other regulatory measures for sources that fall outside of NSR to establish better pollution controls for smaller sources.

Emissions that fall within this de minimis exemption could include fugitive dust from mine operations, products of combustion including SO<sub>x</sub>, NO<sub>x</sub>, CO, CO<sub>2</sub>, and VOC from oil processing and handling equipment.

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<sup>82</sup> UAC R307-413-2.



Proposed National Environmental Standards for Hazardous Air Pollutants or NESHAPS regulations on oil and gas sources<sup>83</sup> could significantly lower emissions, particularly from VOC sources. These VOC reduction methods include the use of low bleed pneumatic controllers, wet seals on centrifugal compressors, rod packing replacement for reciprocating compressors, and the use of vapor recovery units on storage tanks. Use of these controls could prove crucial to protecting Basin air quality while allowing for resource development.

We have included suggested oil shale development BMPs for fugitive dust, VOCs, and combustion engines. These BMPs include management practices for emissions from current oil shale development projects. The BMPs cited do not represent the full complement available for emissions reduction.

#### *Fugitive Dust*

##### *Blasting*

- Stabilize surface soils where drills, support equipment, and vehicles will operate
- Pre-water and maintain surface soils in a stabilized condition
- Apply and maintain a chemical stabilizer on surface soils
- Stabilize soil during blast preparation activities
- Limit the blast footprint to no larger than what can be practically stabilized immediately following the blast
- Maintain surface rock and vegetation where possible to reduce exposure of disturbed soil to wind
- Stabilize soil after blasting
- Water disturbed soils to form crust immediately following blast and safety clearance

##### *Clearing*

- Stabilize surface soils where support equipment and vehicles will operate
- Pre-water and maintain surface soils in a stabilized condition or,
- Apply and maintain a chemical stabilizer on surface soils
- Stabilize disturbed soil immediately after clearing and grubbing activities
- Water disturbed soils to form crust, or
- Apply and maintain a chemical stabilizer on disturbed soils to form crust.
- Stabilize slopes at completion of activity
- Stabilize sloping surfaces using soil binders until vegetation or groundcover can effectively stabilize the slope
- Apply water and maintain sloping surfaces/wind breaks in crusted conditions

##### *Additional Ongoing Measures*

- Water unpaved roads periodically or apply chemical stabilizers
- Remove dust-forming debris from roads promptly and scrape and compact unpaved roads frequently to stabilize the road surface
- Restrict the speed of vehicles in and around the mining operation
- Revegetate, mulch, or otherwise stabilize the surface of all areas adjoining roads that are a source of fugitive dust

<sup>83</sup> 76 FR 52738, Tuesday August 23, 2011.



- Restrict the travel of vehicles on other than established roads
- Enclose, cover, water, or otherwise treat loaded haul trucks to minimize loss of material to wind and spillage
- Substitute conveyor systems for haul trucks and cover conveyor systems when conveyed loads are subject to wind erosion
- Minimize the area of disturbed land
- Revegetate lands promptly
- Plant special windbreak vegetation at critical points in the permit area
- Control dust using water sprays, hoods, dust collectors or other controls
- Reduce the period of time between initially disturbing the soil and revegetating or other surface stabilization
- Restrict fugitive dust at spoil transfer and loading points
- Control dust from shale storage piles through use of enclosures, covers, or stabilization

#### *Combustion Engines*

Require the following emission standards for stationary internal combustion engines:

- 2 g/bhp-hr of NO<sub>x</sub> for engines less than 300 horsepower
- 1 g/bhp-hr of NO<sub>x</sub> for engines over 300 horsepower.

Control emissions from engines utilizing Best Available Control Technology (BACT) such as lean-burn technology, catalysts, air/fuel ratio controllers or other technologies

Schedule proper maintenance and upkeep of vehicles to ensure optimal functioning of engines

#### *Volatile Organic Compounds*

- Use vapor control systems on tank breathing vents, with vapors routed to condensers and/or combustion for tanks larger than a certain capacity<sup>84</sup> if the material has a true vapor pressure greater than 5.2 kPa. This is equal to 5.2 bar, 0.05 atmospheres, or 0.76 psig.
- Conduct regular leak detection using a VOC detection device and repair all process connections in VOC service
- Ensure regular maintenance of tanks, roof seals, hatch seals, and tank loading process connections
- Replace safety relief valves less than 48 hours after use
- Operate thief hatches in the locked position at all times when the tank itself is not being actively maintained
- Discourage the use of surface evaporation impoundments to receive produced wastewater
- Use pneumatic controllers with a no bleed or low bleed design

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<sup>84</sup> 40 CFR 60 Subpart Kb



*Studies and Partnerships*

UDAQ is currently involved in several studies to address the problem of wintertime ozone in the Uintah Basin. Stakeholders from the oil and gas industry, federal land management agencies (including the BLM), several western states, and the EPA have joined forces to identify the causes of winter ozone and formulate mitigation strategies.

In 2009 and 2010, monitors showed that concentrations of both PM<sub>2.5</sub> and ozone were at or near the current state and national standards. The EPA and the Ute Indian Tribe have four monitoring stations in the Uintah Basin: Myton, White Rocks, Ouray, and Red Wash. In the winter of 2010, ozone levels reached a high 8-hour value of 139 ppm during inversion conditions, nearly twice the national health standard. UDAQ wintering monitoring studies for 2007, 2008, and 2009 have shown that, under inversion conditions, PM<sub>2.5</sub> concentrations are at or above the standard and can be as high as those seen along the Wasatch Front. Due to low snow cover this winter, in 2012 ozone levels did not exceed these standards. However, UDAQ anticipates that under normal snow cover conditions in the Basin, ozone levels will rise above this standard during wintertime inversions.

The Uintah Basin 2012 Winter Ozone Study was a comprehensive study of the atmospheric chemistry and precursor gases that form wintertime ozone in the Basin. The study was by far the largest and most complex air quality study ever conducted in Utah. The nearly \$3 million effort was funded by a number of agencies, including the Uintah Basin Impact Mitigation Special Service District, Western Energy Alliance, BLM's Utah Office, and EPA Region 8. Cooperative research work was undertaken by atmospheric research partners from USU, NOAA's Chemical Sciences and Global Monitoring Divisions, University of Colorado's Institute of Arctic and Alpine Research, DAQ, EPA, BLM, and local oil and gas producing members of the Western Energy Alliance.

*Study components included:*

- Basin-wide ozone and precursor measurements to determine spatial extent of the problem.
- Long-term monitoring of ozone and key precursors at two "super sites"—Roosevelt and Horse Pool—to provide baseline trend information against which energy production increases and mitigation work can be evaluated.
- Intensive atmospheric chemistry studies to understand the chemical pathways and determine limiting formation precursors.
- Development of a complete, detailed inventory of emissions sources in the Basin, including information on location, operation, and pollutants emitted.

Preliminary results and conclusions are scheduled for release in July 2012. The goal of the study is to develop a conceptual model of wintertime ozone formation in the basin and identify appropriate and effective air pollution mitigation strategies. While the lack of snow this winter hindered efforts to analyze the photochemical reaction of sunlight on snow that seems to lead to ozone production, the emissions inventory component of the study was still important. The emissions inventory identified source emitters, emission rates, and emissions characteristics.



Source specific measurements located areas of high concentrations for precursor gases. This data will not only aid in identifying the location, level, and spatial representation of ozone and its precursors in the Basin, but will also assist in the development of mitigation measures and strategies for emissions reductions in areas where high levels of ozone have been detected.

Utah, Colorado, and Wyoming, the EPA, the BLM, and the U.S. Forest Service are participants in a pilot project called the Three-State Study. The project will provide a regional assessment of air quality conditions by focusing on the impacts from oil and gas development. Leasing allocation decisions in the DPEIS for oil shale and tar sands will be located in these three states and the findings from this project on air quality issues in the Uintah Basin will have bearing on oil shale development in the area.

*Specifically, the pilot project focuses on the following activities:*

- Expanding air quality monitoring to establish baseline conditions, track trends, and evaluate model performance;
- Creating a data warehouse to store, manage, and share data among state and federal agencies, industry, and their contractors to support modeling of air pollutants; and
- Performing regional scale air quality modeling of current and projected conditions.

UDAQ has also established an Oil and Gas Air Quality Partnership to evaluate the impacts of oil and gas development on air quality and determine the best approaches for managing the Uintah Basin air shed. UDAQ will include oil shale development in this effort. Representatives from the following agencies are involved in the partnership:

Anadarko Petroleum	Rocky Mountain Power
Bill Barrett Corporation	SITLA
Bureau of Land Management	Tri-County Health Department
Duchesne County Commission	Uintah County Commission
ECO Resources	Uintah Impact Mitigation SSD
Energy Dynamics Lab	Utah Cooperatives
Environmental Protection Agency	Utah Department of Environmental Quality
GASCO	Utah Division of Air Quality
McVehil Associates	Utah Governor's Office
Newfield Exploration	Utah Petroleum Association
QEP	Ute Energy
Questar	Western Energy Alliance
Red Leaf Resources	

These collaborative efforts demonstrate the willingness of parties involved in resource development in the Basin to work cooperatively in search of solutions. These partnerships and the resulting development of air quality mitigation strategies will have a direct bearing on the resource use decisions contained in the DPEIS and should be given thorough consideration.



## Water Quality

### Surface Water Quality

In Utah, oil shale reserves are located primarily in the Green River Formation within the Colorado River drainage. Surface waters in the Uintah Basin are known for high salinity. Several rivers located in the area are listed on Utah's 303(d) list of impaired water bodies for high salinity (total dissolved solids, or TDS) at levels that do not protect for agricultural uses.

When pollutants impair the use of water a study is required to determine how to reduce them and restore water quality. This study is known as a Total Maximum Daily Load (TMDL). A TMDL establishes the maximum amount of a pollutant allowed in the water while maintaining all of its designated beneficial uses. Several water quality studies have been conducted in the Colorado drainage that address the reduction of pollutants like salinity and the restoration of water quality. A full list of approved TMDL's for this area of Utah is located online at or by request from the Division of Water Quality.

The development of oil shale and tar sands as described in the DPEIS will have impacts on the Bitter Creek and Willow Creek watersheds, which will have to be addressed. Willow Creek is on the 2010 Utah 303(d) list of Impaired Waters for biological degradation based upon macro invertebrate data. Bitter Creek frequently exceeds numeric water quality standards for both TDS (>1,200 mg/l) and boron (>750 ug/l). Currently, the main source of TDS and boron in the Uintah Basin is from the erosion of weathered rock. The BLM should consider and, wherever possible, control for actions that could potentially increase either TDS or boron concentrations in the surrounding surface waters.

Oil shale development can potentially cause impacts to surface water quality through:

- Erosion;
- Withdrawal of water for operations; and
- Discharge of water used in operations

Ground disturbance activities (erosion) can degrade surface water through drainage from prepared sites, which can contribute sediment, salts, and possibly chemicals and oil shale products into receiving streams. Typically, DWQ minimizes the degradation to surface water from ground disturbance activities through stormwater permits. However, mining activities are exempt from this requirement unless the water comes into direct contact with tailings. The BLM should evaluate the potential for water-tailings contact. In the event a permit is not required for oil shale projects, DWQ recommends the development of a detailed plan that minimizes stormwater influence on surface waters and a monitoring program that measures the effectiveness of mitigation measures. A voluntary mitigation plan would demonstrate a commitment by project developers to sustainable development and would provide necessary data for future expansions.

Withdrawal of groundwater during mining operations can potentially affect surface water quality. Significant decreases in groundwater aquifers can result in a corresponding decrease in



inputs to streams or lakes. Such decreases would likely increase stream temperature and Dissolved Oxygen (DO), which could have damaging effects on fish and other wildlife.

It is frequently difficult or impossible to contain all of the groundwater withdrawn for mining operations, which necessitates a Utah Point Source Discharge Elimination System (UPDES) permit.

### **Groundwater Permits**

Groundwater conditions in the southern Uintah Basin are poorly known because the area has not been exploited for groundwater historically and the predominance of fine-grained sedimentary rocks in the area is not favorable to containing groundwater in aquifers. Aquifers controlled by the stratigraphy are present, mainly in the subsurface. The Douglas Creek and Bird's Nest aquifers are good examples of these types of aquifers.

These aquifers will become increasingly important as the area is developed for oil shale and tar sands operations. Isolated aquifers and zones of saturation such as PR Spring may be locally important sources of water. Oil shale and tar sands operators should, as part of their mine development activities, prepare an inventory of springs and seeps near their proposed operation and note occurrences of groundwater in exploratory drill holes and water wells. Operators should take samples from these sources to determine background groundwater quality and class.

When ongoing monitoring or other reporting is necessary to ensure groundwater protection, the permittee and DWQ will develop and mutually agree upon permit conditions. A draft version of the permit will be made available to the public for a 30-day comment period, and after resolution of concerns raised during this comment permit, a final permit will be issued.

### **Groundwater Discharge Permits**

The Utah Ground Water Quality Protection Rules (UAC R317-6) allow DWQ to protect Utah's groundwater resources by issuing ground water discharge permits. The rules require facilities that have the potential to cause a discharge of pollutants to groundwater to apply for a ground water discharge permit. These facilities include mining and milling operations with waste management units such as tailings impoundments and waste storage piles. This requirement ensures that oil shale and tar sands facilities that have the potential to impact groundwater resources are regulated by the state to minimize or prevent degradation of groundwater quality.

Groundwater discharge permits require site-specific characterization of the proposed facility including depth to ground water, hydraulic gradient, ground water flow direction, and pre-operational background ground water quality.

The two primary components of a groundwater discharge permit are best available technology and groundwater monitoring. Best available technology minimizes the discharge of contaminants from the waste source by applying control and containment technologies such as liners, leak detection systems, leak collection systems, and pump-back systems. Groundwater



quality monitoring in compliance wells measures the actual effect of the facility operations on groundwater quality. The rules utilize federal drinking water maximum contaminant levels as groundwater quality standards. Permit-specific protection levels are percentages of the standards based on the site- or well-specific Groundwater Class (i.e., the better the ground water quality, the more stringent the protection level). If practical, based on depth to groundwater, compliance monitoring wells are used to provide an early warning of contamination. This allows time to implement corrective actions well before beneficial uses are adversely affected. Permit conditions can also address the discharge of subsurface water affected by a permitted facility that may become a nonpoint source of pollutants to surface water.

In some cases, after review of the material submitted in a groundwater discharge permit application, DWQ may conclude that the project qualifies for permit-by-rule status, if it has *de minimus* effect on water quality or if other regulatory programs insure protection of water resources.

### Technical Comments

#### Preamble, Page xxiii, line 15:

Insert "SITLA" as an acronym for "School and Institutional Trust Lands Administration (Utah)"

#### ES. 6.3, page ES-6, lines 28-29:

Core or priority sage grouse habitat, as defined by such guidance as the BLM or DOI may issue" has not been determined. DOI and BLM have committed to defer to state-level determinations of what constitutes such habitat. These processes are ongoing. As more fully set forth in the body of these comments: (1) the State and its constituent agencies cannot adequately comment on the proposed alternatives until the extent of such habitat is determined; and (2) the PEIS appears to be based on maps of such habitat that have not been themselves released for public comment or reviewed under NEPA.

#### Chapter 1, Page 1-13, lines 32-37:

It is erroneous to exclude oil shale regulations and national policy from the scope of the PEIS. BLM is obligated to follow the law in its analysis. EPACT 2005 explicitly makes development of oil shale resources a national policy priority. The PEIS needs to include a detailed analysis of the relationship between each alternative and national policy as expressed in EPACT. Similarly, determination of commercial royalty rates should not be excluded from the scope of the PEIS. Depending on the level at which such rates are set, the range of foreseeable development of oil shale resources will vary greatly. The analysis of each alternative should include analysis of development scenarios under various royalty rates, or else be delayed until royalty rates are determined, and then analyzed.



**Chapter 1, page 1-20, II. 20-23:**

The PEIS states that BLM has not received any new information since the 2008 OST PEIS and ROD concerning the environmental consequences of commercial oil shale development. There is a wealth of public information that is available and should be considered. These include multiple reports prepared on behalf of the U.S. Department of Energy by the University of Utah's Institute for Clean and Secure Energy on environmental, resource and socioeconomic consequences of unconventional fuel development in the subject area, prepared in response to Section 369 of EPACT. Significant information is also available with respect to development of oil shale and tar sands on state trust lands in Utah, notably in the form of public files for mine permitting on file with the Utah Division of Oil, Gas and Mining and the Utah Division of Water Quality. The DPEIS must be revised to take into account each of these sources of information.

**Chapter 2, Page 2-13, II. 10-24.:**

As noted in the body of the state's letter, the PEIS should confirm that just because BLM lands are withheld from competitive leasing does not disqualify the lands from conveyance to the State by land exchange in accordance with Section 369(n) of EPACT, other exchange authority, or state indemnity selection.

This section of the PEIS should also be reworded to discuss how BLM will follow Congress' mandatory directive in Section 369(n) of EPACT that it will give priority to land exchanges. As currently draft, the PEIS notes the directive, and then devotes most discussion to why BLM will have problems with doing so. The PEIS should reflect that by law such exchanges are to be a priority. The PEIS should also note the environmental benefits of land exchanges, including protection of natural values and other resources on state trust lands through conveyance to the United States.

This section of the PEIS also needs to be supplemented to reflect legal alternatives to an appraisal process in concluding land exchanges. Existing BLM land exchange regulations state:

*In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value: 43 C.F.R. 2201.3-2(c).*

This language has been used as the basis for multiple oil shale land exchanges between BLM and Utah on the basis of ton-for-ton conveyance of oil shale, adjusted for energy content, without necessity of appraisal. Similarly, the Utah Recreation Land Exchange Act of 2009, Pub. L. 111-53, contains language for transfer of federal oil shale land to the State without appraisal, based on BLM reserving an interest in future oil shale production from the lands equal to 50% of bonuses and rentals, and BLM's royalty share, less preexisting mineral revenue sharing obligations to the State. See H. Rep. 111-79 at 6-7 (analysis of section 3(f)). Proposed



legislation now pending in Congress as H.R. 4027 contains similar language with respect to mineral valuation. The PEIS should recognize these authorities.

#### **Chapter 4: Effects of Oil Shale Technologies**

##### **Table 4.1.1-1 Assumptions Associated with a Surface Mine with Surface Retort, page 4-3.**

This table needs further explanation of the data presented to improve clarity. For example, the “(f)ootprint of development area (acres)” for Wyoming and Utah should give a number based on a time frame (per/yr) as is done with “water use,” rather than the vague footnote explanation that it is the disturbance at any given time. The factor listed for “surface disturbance” is a larger number of acres than one could assume is the cumulative life of mine disturbance and it would be helpful to have the number in the table labeled as cumulative rather than having the reader refer to the footnote for extra clarification. The “wastewater” factor is provided on a gal/ton basis, but the table does not contain any data on the annual or cumulative number of tons produced. Such data would make this number meaningful in relation to the other factors provided. The wastewater factor should be in gallons per year, or ac-ft /yr, or gallons per barrel of oil produced in order to be meaningful. The “total employment” factor is not the sum of the direct and indirect employment factors and there is no explanation of how the BLM derived total employment from direct and indirect sources.

##### **Table 4.1.2-1 Assumptions Associated with an Underground Mine with Surface Retort, page 4-8.**

This table suffers from the same lack of clarity in data presented as mentioned for Table 4.1.1-1.

##### **Table 4.1.3-1 Assumptions Associated with an In Situ Retort Project, page 4-11**

This table suffers from the same lack of clarity in the data presented as mention for Table 4.1.1-1.

#### **4.1.6 Expansion of Electricity-Generating Capacity, page 4-13**

This section mainly refers to the high electricity need for in situ projects proposed for Colorado, and does not differentiate that from the lower power need for the mine and retort technologies proposed in Utah. Specifically, this section does not reflect that ENEFIT and Red Leaf assertion that their operation will supply nearly all their own project energy needs from the retorting process. In addition, the first paragraph incorrectly states that definitive information about the power requirements of commercial oil shale development is not available. This is not the case with the ENEFIT technology. BLM’s analysis is faulty because it does not include specific information about ENEFIT and Red Leaf technologies, which are both poised for commercial development in Utah.

#### **4.2.1.2 Acquisition, Conversion, or Transfer of Water Rights, page 4-19**



This section only discusses water rights in Colorado, not in Utah or Wyoming. The ENEFIT project acquisition included water rights. The DPEIS needs a more complete and balanced discussion about water rights for all three states.

#### **4.5 Water Resources, starting page 4-31**

The discussion in this section and various subsections tends to use relative terms like “large” and “small” without defining what is meant quantitatively by such terms. For example, on page 4-33 under Water Use, on line 41, the PEIS states that “A large amount of water is required during the operations phase.” Subsequent sentences give actual numerical ranges of water use, but nowhere is the term “large” actually defined. Likewise, on page 4-39, the last sentence EIS states that “(a) relatively large water-quality impact is expected in areas where population growth is large and the receiving water is small.” The PEIS should define such relative terms in quantitative terms.

##### **4.9.1.4.2 Power Generation Facilities, page 4-152**

This section relies on outdated information that anticipates new power generation coming from coal-fired power plants. Pending carbon management legislation and a surge of new domestic natural gas supplies means new power plants in Utah would likely be gas-fired. This assumption of coal-fired power generation and any associated analysis incorporating this assumption is out-of-date for the present market situations. BLM needs to revise the DPEIS to reflect the current market situation for new power generation plants.

#### **4.15 Health and Safety, page 4-199, Table 4.15.2**

At the beginning of Chapter 4, the BLM revised the size of mining and surface retort and in situ oil shale projects downward, but this table utilizes the 2008 scenario of a 1,000,000 bbl/day oil shale industry. This table needs to have the size of the industry’s health effects reduced to match the reduced size of the oil shale operations as provided earlier in Chapter 4. This would probably drop the overall industry to 14 facilities, with a production level below 500,000 bbl/day. The accompanying text and footnote also appear to be inconsistent and provide an overestimation of the number of oil shale workers compared to the total employee numbers given in Table 4.1.1-1, 4.1.2-1, and 4.1.3-1

#### **Table 6.1.6-5, Projected Levels of Major Activities for Seven Planning Areas**

This table presents faulty analysis of the level of OSTs developments on nonfederal lands in Utah by simply using the phrase “potential unknown” to gloss over known development activities, particularly those in the Book Cliffs area that are mentioned in Appendix B of the PEIS.

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## BOARD OF COUNTY COMMISSIONERS

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80 WEST FLAMING GORGE WAY, SUITE 109  
GREEN RIVER, WY 82935  
PHONE: (307) 872-3890  
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Thursday, May 3, 2012

Sherri Thompson, Project Manager  
Bureau of Land Management – Colorado State Office  
2850 Youngfield Street  
Denver, CO 80215

RE: Sweetwater County's comments regarding the Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah and Wyoming.

Dear Ms. Thompson:

Sweetwater County would like to thank you for the opportunity to comment on the Draft Programmatic EIS for Allocation of Oil Shale and Tar Sands Resources on lands administered by the Bureau of Land Management (BLM) in Colorado, Utah and Wyoming (2012 OSTs DPEIS).

After attending the BLM's open house held in Rock Springs, Wyoming, on Thursday, March 15, 2012, and after reviewing the 2012 OSTs DPEIS, Sweetwater County recommends that the BLM adopt either of the following courses of action in regards to the 2012 OSTs DPEIS:

1. The BLM complies with established laws and ceases all further activities related to the 2012 OSTs DPEIS and maintains its decision made in the 2008 OSTs PEIS; or
2. The BLM selects in its ROD the 2012 OSTs DPEIS "No Action Alternative" that maintains 1,000,453 acres of lands within Wyoming open to consideration for oil shale leasing.

Sweetwater County recommends these options for the following reasons:

1. Sweetwater County's rationale for recommendation one is based on its approval of Sweetwater County Resolution 12-04-CC-02 (see attached). Sweetwater County, Wyoming has joined several other counties within Wyoming, Colorado and Utah in opposing the 2012 OSTs DPEIS. The reasons of this opposition are outlined below:
  - a. The creation of the 2012 OSTs DPEIS was completed in open contempt and in violation of the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011.



- b. The 2012 OSTs DPEIS preferred alternative is the creation of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development and, therefore, this preferred alternative is entirely pre-determined and pre-decisional in violation of NEPA.
- c. The creation of the 2012 OSTs DPEIS preferred alternative entirely ignores the input into the 2008 OSTs PEIS provided multiple cooperators including a Task Force of Governors, state and county governments and other stakeholders, which was required by the Energy Policy Act of 2005.
- d. If the 2012 OSTs DPEIS preferred alternative is adopted in the Record of Decision the vast oil shale and tar resources of Wyoming, Colorado and Utah will be off limits to development, which would result in a loss of 8 trillion barrels of oil from our nation's economy.

2. Sweetwater County's rationale for recommendation two is based on the following:

- a. Mineral development provides seventy percent of Sweetwater County's ad valorem tax revenues and provides the economic base that supports the majority of the industries, businesses, jobs and housing within the County. Any reduction in mineral value or supply creates a major economic hardship for Sweetwater County and the State of Wyoming.

To prevent this economic hardship, it is essential that the County and the State strive to maintain the highest market value for its mineral resources and to continue to explore and research the development of new minerals such as oil shale. If current research on developing effective oil shale extraction technologies is successful, it is likely that the production of oil from oil shale will play a major role supporting our local, state and national economies. To take advantage of the promising economic benefits of this research, it is imperative that Sweetwater County and the State of Wyoming support the "No Action Alternative" which will preserve the potential for over one million acres within Wyoming to be available for oil shale leasing. Without the availability of these acres for potential oil shale development, we will miss an important opportunity to enhance our future economic base.

- b. The United States is currently in a growing economic crisis partially caused by an export / import cycle in which our Country exports its wealth to the Middle East and other regions of the world in exchange for oil imports to meet our Country's energy needs. This export / import cycle not only transfers the wealth of our nation to other countries, it transfers opportunities for business growth, job creation and quality of life for the citizens within our own borders.

To break this export / import cycle and to keep our nation's wealth within its borders, our Country must develop its own mineral energy resources including oil, gas, coal, uranium and oil shale. By developing these resources, our nation will be creating wealth and jobs for its own citizens rather than for the citizens of foreign countries. Through the use of proper environmental review and proven technologies, our nation's energy resources can





be developed in a manner that not only sustains our nation's economy, but also protects our nation's environment.

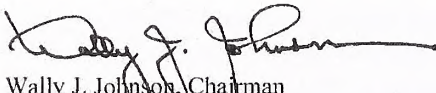
If we continue down the path of developing other nation's energy resource before we develop the energy resources within United States, we will only deepen our Nation's economic crisis. This is not the path that Sweetwater County believes our nation should follow, and therefore, Sweetwater County supports developing our nation's vast oil shale reserves, which are being considered in this Draft PEIS.

In summary and based on the above comments, in regards to Sweetwater County's recommendations on the 2012 OSTs DPEIS, the County recommends either of the following two options:

1. The BLM complies with existing laws and cease all further activities related to the 2012 OSTs DPEIS and maintain the Record of Decision it made in the 2008 OSTs PEIS, or
2. The BLM selects the "No Action Alternative" in the 2012 OSTs DPEIS, which maintains 1,000,453 acres of lands within Wyoming open to consideration for oil shale leasing.

If you have any questions concerning Sweetwater County's above comments, please contact me a 307-872-3897.

Sincerely,



Wally J. Johnson, Chairman  
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 12-04-CC-02

cc Governor Matt Mead  
Jerimiah Rieman, Governor's Natural Resource Policy Advisor  
Wyoming's Congressional Delegation  
John Ruhs, BLM High Desert District Manager  
Lance Porter, BLM Rock Springs Field Office Manager  
Sweetwater County Board of County Commissioners  
Temple Stoellinger, WCCA Natural Resource Attorney  
Kent Connelly, President - Coalition of Local Governments  
Mary Thoman, President - Sweetwater County Conservation District  
Eric Bingham, Sweetwater County Land Use Director



RESOLUTION 12-04-CC-02  
SWEETWATER COUNTY, STATE OF WYOMING

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-  
PP-OSHL

(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND  
WYOMING,

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Sweetwater County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

BACKGROUND

As background to this Resolution, Sweetwater County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and



WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and  
WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and



WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

## RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY SWEETWATER COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Sweetwater County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Sweetwater County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first

imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Sweetwater Count calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

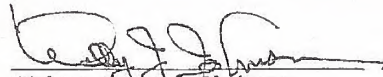
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;


5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

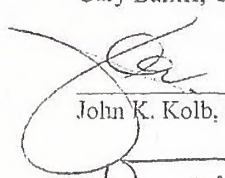
6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

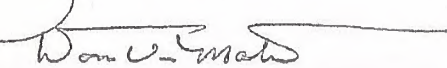
Adopted at the regularly scheduled meeting of the Sweetwater County Board of County Commissioners, held on the 17<sup>th</sup> day of April 2012.

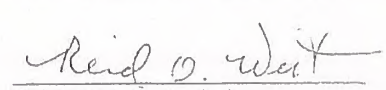
BOARD OF COUNTY COMMISSIONERS

  
Wally J. Johnson, Chairman

  
Gary Bailiff, Commissioner

  
John K. Kolb, Commissioner

  
Don Van Matre, Commissioner

  
Reid West, Commissioner



ATTESTED TO:



Steven Dale Davis  
Steven Dale Davis, County Clerk  
Sweetwater County, Wyoming

# UINTAH COUNTY



STATE OF UTAH

*Our past is the nation's future*

COMMISSIONERS: .  
 Darlene R. Burns  
 Michael J. McKee  
 Mark D. Raymond  
 ASSESSOR - Rolene Rasmussen  
 ATTORNEY - G. Mark Thomas  
 CLERK-AUDITOR - Michael W. Wilkins  
 RECORDER - Randy J. Simmons  
 TREASURER - Wendi Long  
 SHERIFF - Jeff Merrill  
 SURVEYOR - John Slaugh

May 4, 2012

BLM Oil Shale & Tar Sands PEIS  
 Argonne National Laboratory  
 EVS Division, Building 240  
 9700 South Cass Avenue  
 Argonne, IL 60439

Ken Salazar, Secretary  
 U.S. Department of the Interior  
 1849 C Street, N.W.  
 Washington DC 20240

Bob Abbey, Director  
 Bureau of Land Management  
 1849 C Street, N.W., Room 5665

RE: Comments on Draft Bureau of Land Management (BLM) Oil Shale & Tar Sands PEIS

Dear Secretary Salazar, Director Abbey, et al:

On its face the BLM's 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement, BLM Project #WO-300-1310-PP-OSHL for Lands Administered by the BLM in Colorado, Utah and Wyoming (Hereafter 2012 OSTs DPEIS) is nothing more than part of a negotiated settlement from a friendly lawsuit brought by an environmental coalition.<sup>1</sup> During this process, which began early 2011, it has been unfortunate that Uintah County must continue to educate the federal government on the realities of oil shale and oil sands development. The Administration's death grip on old stereotypes related to oil shale and oil sands development does not make them true.

On May 5, 2011, Uintah County sent a letter to the Bureau of Land Management respectfully requesting the BLM to cease and desist further activity on the Programmatic EIS for Allocation

<sup>1</sup> In a letter, stamped May 3, 2012, Director Robert Abbey denied a request to extend the comment period by Representative Jason Chaffetz, citing the Settlement Agreement as prohibitive in the agreed timeline. However, Uintah County understands that these new draft regulations are expected to be provided to the State of Utah within the next 10-15 days. Extending the comment period for a few weeks after publication would not disrupt the BLM's sacred timeline. Director Abbey may not want to connect this PEIS to the new draft regulations, but they are in fact just two sides of the same coin. What good does it do to talk about the size and location of a water pipe if the reservoir is drained? Director Abbey also pointed to the 90 day review period as providing sufficient time to review and comment. However, just three months ago the BLM granted requests for additional time to provide comments related to the sage-grouse EIS for an additional 45 days.



of Oil Shale and Tar Sands Resources on Lands Administered by the BLM. See attached letter. Apparently, the BLM has decided to ignore the cordial request from a cooperating entity. In addition to this request, Uintah County along with many of its neighboring counties has requested an extension to the comment period. This request was denied on May 3, 2012. Thus, Uintah County is left with no other alternative but to build and preserve the record and wait for the inevitable to be decided.<sup>2</sup>

So here we go again.

### 2005 Energy Policy Act Mandate for Oil Shale and Tar Sands Program

Section 369 of the Energy Policy Act, adopted on August 8, 2005, declared it to be the United States' policy that "oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. §15927(b)(1). This policy statement is an unambiguous mandate from Congress. Further, Congress also directed that it be United States' policy that commercial development of oil shale "be conducted in an environmentally sound manner, using practices that minimize impacts." 42 U.S.C. §15927(b)(2). Apparently Congressional Policy is not even a blip on the BLM's screen for the the Draft OSTs PEIS states on page 1-13, lines 39-45:

"Issues determined to fall outside the scope of the PEIS because they were not pertinent to the purpose and need for the proposed land use planning decision as described in the NOI included issues relating to...foreign oil as a national security issue."

Section 369 further required that the Interior Secretary promptly follow the completion of the programmatic EIS with regulations establishing an oil shale leasing program. See 42 U.S.C. §15927(d)(2). The BLM simply must not be concerned with Congressional mandates for the Preferred Alternative simply emasculates the program by cutting off the most geologically prospective public lands that are otherwise suitable and available for mineral leasing.<sup>3</sup>

### Wilderness Characteristics

Our May 5, 2011 letter stated:

"According to the preliminary purpose and need statement in the notice of intent, the Programmatic EIS will analyze removing from oil shale and tar sands leasing 'All areas

<sup>2</sup> Why "inevitable"? In an email, attached to these comments, Sherri Thompson, Project Manager for this PEIS, stated: "As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and tar sands is not at present a proven commercially-viable energy source, the BLM, through its planning process, is taking a hard look at whether it is appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale, and approximately 431,000 acres of public land to remain available for potential development of tar sands: This new planning initiative will provide the BLM an opportunity to consider the 2008 allocation decisions in light of the still nascent character of the technology necessary to economically develop oil shale resources, as well as certain information not available in 2008." Sadly, the outcome of this PEIS process was predetermined.

<sup>3</sup> The USGS has estimated the total in-place oil shale resources to be: Eocene Green River Formation to be 1.44 trillion barrels; Piceance Basin of Colorado to be 1.52 trillion barrels; and the Uinta Basin to be 1.32 trillion barrels.



that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]’ Further, the notice of intent states:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e. where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply).’

This language documents the BLM’s intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310. However, any attempt by the BLM [to do so] is a patent violation of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011.”

Utah County followed up with a comment letter, dated November 14, 2011 (attached hereto and incorporated by reference). BLM knows it was all too happy to resolve a friendly-lawsuit and take the opportunity, under the guise of complying with a settlement agreement, to ram through the Administration’s environmental agenda. The facts are all too obvious.

From our November 14, 2011 letter:

“While Interior Secretary Salazar issued S.O. 3310 on December 23, 2010, Congress prohibited the expenditure of any federal funds for FY 2011 as of April 7, 2011. BLM Director’s admission in a congressional hearing that the Federal Land Policy and Management Act (FLPMA) did not authorize the designation of Wild Lands or “lands with wilderness character” no doubt persuaded many members of Congress to halt this ill-conceived program.”

In summary, in late 2010, Secretary Salazar initiated this portion of the Administration’s environmental agenda. Then the opportunity came, shortly thereafter, to finalize a complex and nuanced Settlement Agreement, and a Joint Motion to Administratively Close the Case, with a coalition of environmental groups. This façade of a legal action gave the administration the cover it needed to pursue its wilderness characteristics policy. This chain of events screams of collusion!

Finally as it pertains to lands with wilderness characteristics, BLM lacks authority to manage lands as if they were wilderness unless such lands were designated as wilderness study areas (WSAs) within the 15-year review and study period, 43 U.S.C. §1782, or such lands have been designated by Congress. While BLM can inventory any resource on public lands and this may include wilderness character, it cannot use the inventory to change management. To the extent that any of the proposed Alternatives propose to manage the lands deemed having wilderness



character, closing them to oil shale and tar sands development is clearly in violation of the Congressional prohibition.

### **Cooperators Unanimous Opposition**

Uintah County greatly appreciates the support from its neighboring counties in providing a strong unified opposition to the reckless course the BLM is pursuing.

On April 9, 2012, the Uintah County Board of County Commissioners passed Resolution #04-09-2012, A Resolution Opposing the BLM's 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement, BLM Project #WO-300-1310-PP-OSHL (Hereafter 2012 OSTs DPEIS) for Lands Administered by the BLM in Colorado, Utah and Wyoming. This Resolution outlines direct and pointed comments relating to the 2012 OSTs DPEIS and are attached hereto and incorporated by reference. We have also included copies of resolutions passed by fellow cooperators voicing similar objections to the 2012 OSTs DPEIS.

### **Local Plan**

In very recognizable fashion FLPMA created a system of public land management honoring the American philosophy of "laboratories of democracy." In 1932, U.S. Supreme Court Justice Louis Brandeis stated "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (dissenting opinion). Uintah County, a political subdivision of the State of Utah, is exercising its duty under our system of Federalism to try sound novel approaches to manage public lands within its boundaries. Again, it is incumbent on federal agencies to the maximum extent possible be consistent with State and local plans (including the State of Utah and Uintah County). Anything short of this constitutes a violation of federal law and is subject to judicial review.

Uintah County has adopted into its general plan, in conjunction with the State of Utah, the Uintah Basin Energy Zone and a Plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County. A copy of said general plan provisions and relevant Utah Code sections are attached hereto and incorporated by reference. The BLM must be consistent with our local plan to the maximum extent possible.

### **General Objection To DPEIS**

In addition to the comments above and those provided in the attached table, Uintah County provides a general objection to the 2012 OSTs DPEIS. As clearly stated in the attached Resolution, Uintah County has shown that this process is unsupportable, arbitrary and a blatant show of conformity to a friendly-lawsuit settlement agreement, which falls out of the public process mandated by Congress. Should BLM continue to go forward with the 2012 OSTs DPEIS regardless of the grievances outlined in the attached Resolution, the only legally viable alternative would be for the BLM to adopt the No-Action Alternative.

**Comment Form**

Uintah County, Utah, a cooperating agency in this environmental review process, has summarized other more specific comments in the attached comment form. These comments are provided in this format to help the reader follow our comments related to this voluminous document. Said comments are provided to log more specific concerns but should not be construed as limiting the impact or legal effect of Uintah County's general objection to the entirety of this process.<sup>4</sup> Uintah County reserves the right, under this general objection, to legally challenge the entire 2012 OSTs DPEIS as soon as BLM completes its charade and reaches its apparent inevitable conclusion.

Section 4(C)(1) of the MOU Between the Department of the Interior, Bureau of Land Management and Uintah County, Utah As a Cooperating Agency (hereinafter "MOU") states: "The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements." So far Uintah County has been flat out ignored in this process.

In addition, Section 5(E) of the MOU states: "Where the BLM and one or more Cooperators disagree on substantive elements of the RMP/EIS (such as designation of the Alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft RMPA/Draft PEIS and the Proposed RMPA/Final PEIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies." BLM has failed to conform to its own simple obligations with its MOU.

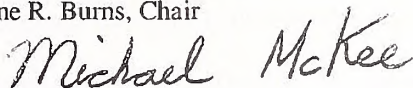
If you have any questions regarding our comments, please contact Jonathan Stearmer, [jonathan@uintahcountyattorney.org](mailto:jonathan@uintahcountyattorney.org) by email or at 435-781-5432.

Sincerely,

UINTAH COUNTY COMMISSION



Darlene R. Burns, Chair



Michael J. McKee



Mark D. Raymond

<sup>4</sup> Uintah County chooses to exercise restraint by not just logging a general comment borrowed from General Anthony Clement McAuliffe: "Nuts!"



cc: Tom Vilsack, Secretary of Agriculture, 1400 Independence Ave., S.W.,  
Washington DC 20250  
Tom Tidwell, Chief US Forest Service, 1400 Independence Ave., S.W.,  
Washington DC 20250  
Harv Forsgren, Regional Forester US Forest Service, 324 25th Street, Ogden, Utah 84401  
Juan Palma, BLM State Director, P.O. Box 45155, Salt Lake City, Utah 84145  
Mark Ward, Utah Assoc. of Counties, 5397 So. Vine Street, Salt Lake City, UT 84107  
Kathleen Clarke, PLPCO, 5110 St. Office Bldg, Box 141107, Salt Lake City, UT 84114



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240  
<http://www.blm.gov>



MAY 3 2012

The Honorable Jason Chaffetz  
House of Representatives  
Washington, DC 20515

Dear Representative Chaffetz:

Thank you for your April 18, 2012, letter requesting an extension of the timeframe to submit comments on the Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement (PEIS). Comments are currently due May 4, 2012. Your request is to extend the comment period for a minimum of 60 days.

Regrettably, the Bureau of Land Management (BLM) is unable to grant your request for an extension. On January 16, 2009, a lawsuit was filed by several organizations challenging the 2008 PEIS Record of Decision (ROD). This suit was settled, and as a condition of that settlement, the BLM has agreed to engage in a new planning initiative that takes a fresh look at the allocation decisions made in the 2008 ROD. Under the February 2011 settlement agreement filed with the District Court in Colorado, the BLM agreed to use its best efforts to complete its decision-making and approve a ROD for this new planning process by December 31, 2012.

The BLM anticipates issuing amendments to the existing oil shale regulations by May 15, 2012. The changes in the regulations will not have an impact on the allocation decisions made in the PEIS. The regulations will guide approval of and apply to leasing and development operations once a decision has been made to move forward with a commercial oil shale project. The PEIS reassesses the appropriate mix of allowable uses with respect to opening lands for future oil shale and tar sands leasing and potential development.

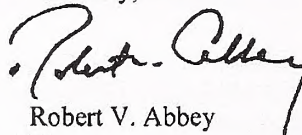
Our goal is to achieve the terms of the agreement with maximum public participation. We are working diligently to comply with the settlement agreement while providing many opportunities for public participation. In March 2012, the BLM held four open houses in several cities in Colorado, Utah, and Wyoming to encourage public participation in the review process.

Furthermore, the public is provided 90 days to review and comment on the Draft PEIS, as required by the BLM land use planning regulations (43 CFR 1610.2(e)). We believe this provides the public with sufficient opportunity to review and provide substantive comments on the draft document.



As this document supports only decision-making regarding land use allocation and not lease issuance or approval of development activities, there will be further opportunity to participate in future NEPA processes relating to potential oil shale development in Colorado, Utah, and Wyoming. I appreciate your interest in this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert V. Abbey". The signature is fluid and cursive, with the first name "Robert" and last name "Abbey" clearly distinguishable.

Robert V. Abbey  
Director

bc: LLM:WO620:LS:401  
LLM:WO320  
LLM:WO300

TYPED:LLM:WO600:MIB5070:CRichardson:5/3/12:ESO-37799:3021



# UINTAH COUNTY



STATE OF UTAH  
*Our past is the nation's future*

**COMMISSIONERS:**

Michael J. McKee  
Darlene R. Burns  
Mark D. Raymond  
ASSESSOR - Rolenne Rasmussen  
ATTORNEY - JoAnn B. Stringham  
CLERK-AUDITOR - Michael W. Wilkins  
RECORDER - Randy J. Simmons  
TREASURER - Wendi Long  
SHERIFF - Jeff Merrill  
SURVEYOR - John Slaugh

April 26, 2012

BLM Oil Shale & Tar Sands PEIS  
Argonne National Laboratory  
EVS Division, Building 240  
9700 South Cass Avenue  
Argonne, IL 60439

Ken Salazar, Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Bob Abbey, Director  
Bureau of Land Management  
1849 C Street, N.W., Room 5665

RE: Request for Extension to Comment Period on Draft BLM Oil Shale & Tar Sands PEIS

Sent via First Class Mail and email: Secretary Ken Salazar [exsec@ios.doi.gov](mailto:exsec@ios.doi.gov);  
Robert Abbey [Director@blm.gov](mailto:Director@blm.gov)

Dear Secretary Salazar, Director Abbey, et al:

On April 9, 2012, Uintah County, Utah passed a resolution opposing the BLM's 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement (attached hereto with other resolutions from counties in the Tri-State area). As a cooperating agency in this environmental review we respectfully request an extension to the comment period, currently set to expire May 4, 2012. It is our understanding that this request for an extension has also been made, by resolution, by eight other counties, also acting under their cooperator status. Three distinct justifications necessitate this extension.

First, under the friendly-lawsuit settlement agreement the BLM agreed to develop new oil shale regulations. We understand the draft regulations are due to be published on or around May 15, 2012. As a cooperator it is impossible for us to make clear concise comments on the PDEIS until we have the opportunity to understand at least in some detail the scope of these new regulations. Indeed, cooperators run a substantial risk in proffering inconsistent and confusing responses to the DPEIS and any draft regulations; thus, undermining the integrity of NEPA process. Consequently an extension should be granted to at least 30 days after publication of this new oil shale regulation.

Second, the sheer volume of the DPEIS necessitates a time consuming review. As a cooperator, Uintah County requests additional time to vet and analyze the DPEIS. This need becomes even more prominent based on the anticipation of new draft regulations pending publication, for it is extremely difficult to adequately comment on a four volume DPEIS if we do not have all relevant information.

Third, as detailed in the attached Resolution, Uintah County has raised numerous legal challenges to the very process of the BLM taking a "fresh look" at lands available for oil shale and oil sands. Granting an extension will allow the BLM to thoughtfully consider the consequences of continuing down this tenuous political road and give time for the BLM to make the correct decision to cease and desist all actions related to the DPEIS.

We look forward to seeing the requested extension granted. If you have any questions regarding our comments, please contact Jonathan Stearmer, [jonathan@uintahcountyatlaw.org](mailto:jonathan@uintahcountyatlaw.org) by email or at 435-781-5432.

Sincerely,

*David R. Burns, Uintah County Commission Chair*  
*Michael McKee*

*Mark D. Raymond*

UINTAH COUNTY COMMISSION

cc: Tom Vilsack, Secretary of Agriculture, 1400 Independence Ave., S.W.,  
Washington DC 20250  
Tomas Tidwell, Chief US Forest Service, 1400 Independence Ave., S.W.,  
Washington DC 20250  
Harv Forsgren, Regional Forester US Forest Service, 324 25th Street, Ogden, Utah 84401  
Juan Palma, BLM State Director, P.O. Box 45155, Salt Lake City, Utah 84145  
Mark Ward, Utah Assoc. of Counties, 5397 So. Vine Street, Salt Lake City, UT 84107  
Kathleen Clarke, PLPCO, 5110 St. Office Bldg, Box 141107, Salt Lake City, UT 84114



**Sally Shoemaker**

---

**From:** Thompson, Sherri J [sthompso@blm.gov]  
**Sent:** Monday, October 17, 2011 9:32 AM  
**To:** Clayton, Creed; Modde, Tim; Carlson, Dave E; John Harja; Jonathan Teichert; Kirk Wood; Melinda Brimhall; Mike Braaten; Rex Sacco; Tom Jankovsky; Sally Shoemaker  
**Subject:** 2012 Oil Shale/Tar Sands PEIS Draft Review  
**Attachments:** OSTs\_Chapter\_1[1].docx

The BLM is in the process of taking a fresh look at the decisions made in the 2008 Oil Shale and Tar Sands Programmatic Environmental Impact Statement (OSTS PEIS). As background, the Notice of Intent (NOI) to Prepare a Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming was published on April 14, 2011. As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and tar sands is not at present a proven commercially-viable energy source, the BLM, through its planning process, is taking a hard look at whether it is appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale, and approximately 431,000 acres of public land to remain available for potential development of tar sands. This new planning initiative will provide the BLM an opportunity to consider the 2008 allocation decisions in light of the still nascent character of the technology necessary to economically develop oil shale resources, as well as certain information not available in 2008. In 2009, a consortium of plaintiffs filed two lawsuits in the federal District of Colorado, each now captioned *CEC v. Salazar*, against the BLM and the Department of Interior. The second suit challenged the BLM's 2008 resource management plan amendments and record of decision (ROD) for Oil Shale and Tar Sands Resources. This suit was settled. Under the settlement agreement filed with the District Court in Colorado, the BLM agreed to use best efforts to complete its decision-making, and approve a Record of Decision for this new planning process by December 31, 2012.

As such, we are working with some extremely tight timeframes. The internal Draft of the 2012 OSTs PEIS will be available on October 17<sup>th</sup> for a three week review period, ending November 4, 2011. Argonne National Laboratory, the contractor for this PEIS, will provide the document to a Sharepoint site, where it can be downloaded. I am giving your names, phone numbers and email addresses to Argonne National Laboratory today so that you can access the file transfer site. This will take a day or two, so in the meantime, I have attached Chapter 1 to this email in case anyone has time to get started today.

Chapters 1-5 will be available Monday morning, October 17<sup>th</sup>. Chapter 6 will be available on Friday, October 21<sup>st</sup>. Comments should be made using Track Changes. Staff can send comments directly to Kurt Picel, the Argonne National Laboratory Project Manager at [kpichel@anl.gov](mailto:kpichel@anl.gov)

I know you and your staffs' are very busy with other work. We appreciate your help and involvement in this process. If you have any questions regarding the review, please contact Sherri Thompson, Project Manager, at 303.239.3758. Thank-you!

# UINTAH COUNTY



STATE OF UTAH

*Our past is the nation's future*

May 5, 2011

COMMISSIONERS:

Michael J. McKee  
Darlene R. Burns  
Mark D. Raymond

ASSESSOR - Rolene Rasmussen  
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SHERIFF - Jeff Merrill  
SURVEYOR - John Slaugh

BY U.S. MAIL TO:

Robert Abbey, Director  
Bureau of Land Management 1849 C Street NW, Rm. 5665  
Washington DC 20240

Juan Palma  
Utah State Director  
Bureau of Land Management 440 West 200 South, Suite 500  
Salt Lake City, Utah 84101

BLM Oil Shale and Tar Sands Resources Leasing Programmatic EIS Scoping  
Argonne National Laboratory  
EVS, 240  
9700 S. Cass Avenue,  
Argonne, Illinois 60439

Sherri Thompson, Project Manager  
Bureau of Land Management  
Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215

AND BY ELECTRONIC SUBMISSION AT THE FOLLOWING INTERNET WEBSITE:

<http://blm.gov/st5c>

Subject: Request to Cease and Desist Further Activity on Programmatic EIS for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah and Wyoming, WO-300-1310-PP-OSHL

Dear Sir or Madame:

On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced Programmatic EIS. According to the notice of intent, the BLM "intends to take a



hard look at whether it is appropriate for approximately 2,000,000 acres [approved in prior BLM RMPs for oil shale leasing and development] to remain available for potential development of oil shale, and approximately 431,224 acres of public land [approved in prior BLM RMPs for tar sands leasing and development] to remain available for potential development of tar sands." *Id.*, at page 21003. The Programmatic EIS will consider amending several RMPs accordingly, including the Vernal, Price, Richfield and Monticello RMPs in Utah. *Id.*

According to the preliminary purpose and need statement in the notice of intent, the Programmatic EIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004. Further, the notice of intent states:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply).

*Id.*

This language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310. However, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, is a patent violation of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.

The BLM should immediately cease and desist all activities related to the above-referenced Programmatic EIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in compliance with the above-quoted provision in the 2011 CR. Otherwise, the BLM would be in contempt of Congress. We are prepared to seek a court order to this effect if necessary.



hard look at whether it is appropriate for approximately 2,000,000 acres [approved in prior BLM RMPs for oil shale leasing and development] to remain available for potential development of oil shale, and approximately 431,224 acres of public land [approved in prior BLM RMPs for tar sands leasing and development] to remain available for potential development of tar sands." *Id.*, at page 21003. The Programmatic EIS will consider amending several RMPs accordingly, including the Vernal, Price, Richfield and Monticello RMPs in Utah. *Id.*

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*Id.*

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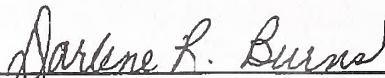
For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.

The BLM should immediately cease and desist all activities related to the above-referenced Programmatic EIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in compliance with the above-quoted provision in the 2011 CR. Otherwise, the BLM would be in contempt of Congress. We are prepared to seek a court order to this effect if necessary.

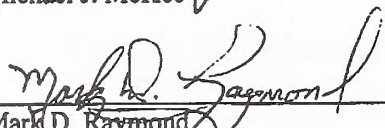


Please advise what course of action you will take as soon as possible. Thank you.

UINTAH COUNTY BOARD OF COMMISSIONERS

  
Darlene R. Burns, Chair

  
Michael J. McKee

  
Mark D. Raymond

# UINTAH COUNTY



STATE OF UTAH

*Our past is the nation's future*

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SURVEYOR - John Slaugh

November 14, 2011

BLM Oil Shale and Tar Sands Programmatic EIS  
Argonne National Laboratory  
9700 South Cass Avenue  
Argonne, IL 60439

Sherri Thompson  
Bureau of Land Management  
2850 Youngfield Street  
Lakewood, CO 80215

Re: Uintah County, Utah's Comments on 2011 the Preferred Alternative of the Draft  
Oil Shale and Tar Sands Programmatic Environmental Impact Statement (PEIS)

To Whom It May Concern:

Uintah County writes to reiterate its view that Alternative 1, the no-action alternative of the above-referenced PEIS, should be chosen by the BLM as the preferred alternative for this PEIS. The primary reasons making Alternative 1, the no-action alternative, the preferred alternative herein, were already explained at pages 6-8 of Uintah County's November 7, 2011 written comments submitted in this matter. Uintah County incorporates herein by this reference, pages 6-8 of its November 7, 2011 written comments, as primary reasons why the no-action alternative should become the preferred alternative herein.

Additional reasons for making the no-action alternative the preferred alternative are as follows:

Alternative 1, the no-action alternative, clearly conforms to the mandate by Congress in the 2005 Energy Policy Act, (2) conforms to the authority that the Bureau of Land Management (BLM) can exercise, (3) also is consistent with the local government plans, programs, and policies; (4) Choosing an alternative that cuts back on domestic energy production capability is ill advised given the dire condition of the world's present energy-related politics.



Sherri Thompson  
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1. 2005 Energy Policy Act Mandate for Oil Shale and Tar Sands Program

Section 369 of the Energy Policy Act, adopted on August 8, 2005, declared it to be the United States' policy that "oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. §15927(b)(1). Congress also directed that it be United States policy that commercial development of oil shale "be conducted in an environmentally sound manner, using practices that minimize impacts." 42 U.S.C. §15927(b)(2).

Section 369 further required that the Interior Secretary promptly follow the completion of the programmatic EIS with regulations establishing an oil shale leasing program. See 42 U.S.C. §15927(d)(2) ("Not later than 6 months after the completion of the [PEIS] under this subsection, the Secretary [of the Interior] shall publish a final regulation establishing such [commercial oil shale and tar sands leasing] program."). The Interior Department did not issue final rules until November 2008. Thus, any programmatic EIS must commit to a robust program. Alternatives 2 and 3 do not conform to the Energy Policy Act direction which still limits BLM's discretion to simply emasculate the program by eliminating public lands that are otherwise suitable and available for mineral leasing.

2. Lands With Wilderness Character

On February 15, 2011, BLM settled a challenge of the adequacy of the Final PEIS with a coalition of environmental groups. BLM agreed to revise the oil shale and tar sands regulations and to revise the EIS to consider an alternative that would exclude all lands with wilderness character from future oil shale and tar sands leasing. *CEC v. Salazar*, Civ. Nos. 09-85; 09-90.

Uintah County, in its November 8, 2011 written comment and elsewhere, has provided BLM with detailed comments regarding its lack of authority to manage lands as if they were wilderness unless such lands were designated as wilderness study areas (WSAs) within the 15-year review and study period, 43 U.S.C. §1782, or such lands have been designated by Congress.

While Interior Secretary Salazar issued S.O. 3310 on December 23, 2010, Congress prohibited the expenditure of any federal funds for FY 2011 as of April 7, 2011. BLM Director's admission in a congressional hearing that the Federal Land Policy and Management Act (FLPMA) did not authorize the designation of Wild Lands or "lands with wilderness character" no doubt persuaded many members of Congress to halt this ill-conceived program.

While an agency can consider an alternative for which it needs statutory authority, it must disclose this salient fact. The Alternative 2 of the 2011 PEIS fails to disclose or discuss the need for additional legal authority. Moreover, while BLM can inventory any resource on public lands and this would consider wilderness character, it cannot use the inventory to change management.



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43 U.S.C. §1711(a). To the extent that Alternatives 2, 3 and 4 propose to manage the lands with wilderness character to close them to oil shale and tar sands, BLM is clearly in violation of that prohibition.

It appears that the BLM has inventoried "lands with wilderness character" in three states in preparation of the PEIS yet it did so without consideration of the above and with no analysis or disclosure of the need or impacts of such designations. In the Vernal Field Office Resource Management Plan, lands with WC were analyzed in detail and those that were determined to possess WC were designated as such in the RMP. The attempt to make additional WC lands designations is simply another attempt to circumvent the resource planning process, plan decisions, analysis, disclosure and public participation.

3. Only Alternative 1, the No Action Alternative Is Consistent With State and Local Government Plans and Policies

FLPMA requires that any BLM land use plan to conform to state and local government plans to the extent it is consistent with federal law. 43 U.S.C. §1712(c)(9) ("Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act."). Alternatives 2, 3 and 4 all fail to meet this standard and thus only Alternative 1 conforms to the consistency mandate.

4. Any Alternative Which Cuts Back on Domestic Energy Production Capability Is Ill Advised Given the Current International Energy Related Political Climate.

The Interior Department's current policies to delay or shut down energy development is incomprehensible when viewed in the context of current world events as well as the economic recession that has gripped the country for more than four years. The Department's continued efforts to stymie domestic energy production threaten national security in a profound way. Oil and gas imports from the Middle East continue to be vulnerable due to increased Islamic militancy in even countries that were previously considered allies. The changes in government and leadership leave the U.S. relationship with countries like Egypt, Libya, and Yemen fragile. The oil fields in Mexico are declining and Venezuela production was nationalized by its charismatic but erratic president, who is not a U.S. ally. The Interior Department's continued efforts to limit domestic energy production cannot be justified in this context.

Chapters 3-6

Utah County chooses not to provide additional comments on Chapters 3-6 of the PEIS. For the reasons stated in its November 7, 2011 written comments, Utah County views this entire 2011 PEIS effort as an illegal attempt at an end run around the Congressional Moratorium against the Order 3310 Wildlands Policy and all that resembles it. This PEIS effort is plainly an effort to push the Order 3310 Wildlands Agenda. For these reasons, Utah County will not grace or



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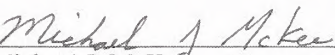
dignify this illegal 2011 PEIS effort with additional comments on Chapters 3-6 at this time.

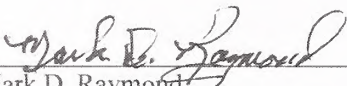
The County reserves the right to comment in detail on the public draft with full expectation that our comments will be fully considered at that time. We have downloaded three different versions of the draft and did not have adequate time to do a comprehensive review. A determination was made that it was more cost effective to wait for the final draft when we should have a more reviewer friendly text and adequate time to conduct a more comprehensive review. This in no way affects our selection of the preferred alternative, which is supported by our comments here.

Sincerely,

UINTAH COUNTY COMMISSION

  
\_\_\_\_\_  
Darlene R. Burns, Chair

  
\_\_\_\_\_  
Michael J. McKee

  
\_\_\_\_\_  
Mark D. Raymond

**UINTAH COUNTY COMMISSION  
RESOLUTION NO. #04-09-2012**

**A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS  
DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT,  
BLM PROJECT #WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTs DPEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING**

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Uintah County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs DPEIS.

**BACKGROUND**

As background to this Resolution, Uintah County recites the following grievances:

**WHEREAS**, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the 2012 OSTs DPEIS; and

**WHEREAS**, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

**WHEREAS**, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

**WHEREAS**, the Purpose and Need portion of the 2012 OSTs DPEIS states at page 1-5, lines 14-18:

"In addition, the BLM has recently completed updating its inventory of lands having wilderness characteristics (LWC) in each of the three states for the planning area, and the



status of several areas originally proposed to be Areas of Critical Environmental Concern (ACECs) in Utah has changed since the preparation of the 2008 OSTs PEIS.”

**WHEREAS**, this language documents the BLM’s intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

**WHEREAS**, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2012 OSTs DPEIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

**WHEREAS**, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

**WHEREAS**, the 2012 OSTs DPEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

**WHEREAS**, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

**WHEREAS**, the 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

**WHEREAS**, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

**WHEREAS**, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 9 trillion barrels of oil; and

**WHEREAS**, the U.S. Geological Survey Oil Shale Assessment Team reports the estimated total in-place oil shale resource for the Uinta Basin of Utah to be 1.32 trillion barrels; and

**WHEREAS**, the preferred alternative in the 2012 OSTs DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

**WHEREAS**, the 2012 OSTs DPEIS fails to analyze alternative 2b, and the BLM admits as much on pages 2-35 of the 2012 OSTs DPEIS; and

**WHEREAS**, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

**WHEREAS**, such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plan, in violation of the Section 202 Planning Process under FLPMA;

**WHEREAS**, the preferred alternative in the 2012 OSTs DPEIS entirely ignores the input of the task force, the cooperating agencies, and the other stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the 2012 OSTs DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities and local government coalitions which require the BLM to (1) publish the written input of cooperators who have unresolved disagreements over the substantive elements of the 2012 OSTs DPEIS, and (2) describe the objectives of the cooperators' land use plans and policies; and

**WHEREAS**, the 2012 OSTs DPEIS restricts the acreage allotted in the 2008 PWID for research and development leasing;

**WHEREAS**, the 2012 OSTs DPEIS threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

**WHEREAS**, the 2012 OSTs DPEIS is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

**WHEREAS**, the BLM has settled on a preferred alternative in the 2012 OSTs DPEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

**WHEREAS**, the acreage approved for Oil Shale and Tar Sands development in the 2012 OSTs DPEIS preferred alternative bears no rational relationship to the stated purpose and need;



**WHEREAS**, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pre-wilderness groups steering BLM's every move;

**WHEREAS**, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the 2012 OSTs DPEIS; and

**WHEREAS**, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy and Management Act (FLPMA) ; and

**WHEREAS**, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources, but in stark contrast the 2012 OSTs DPEIS is plainly inconsistent with State and Local plans and policies, including the Uintah Basin Energy Zone legislation passed in the 2012 Utah Legislature (Senate Bill 83 - SEE UTAH CODE 63J-8-102 & 105.5) and passed by the Uintah County Commission (amendment 8.16 of the Uintah County General Plan), and should the BLM continue with the 2012 OSTs DPEIS it will need to adequately explain why consistency is not achievable; and

**WHEREAS**, Uintah County has adopted the following into its general plan:

“Further, additional lands in Uintah County should also be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15/gal of oil per ton of ore. Lands with these minimum resource thicknesses and gallonage yield estimates were approved for oil shale and/or oil sands development in Wyoming within the Green River Formation. Similarly situated resources should be subjected to the same approval process.”

Should the BLM continue with the 2012 OSTs DPEIS it will need to be to the maximum extent possible consistent with this general plan or adequately explain why consistency is not achievable; and

**WHEREAS**, even prior to 2008, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

**WHEREAS**, even prior to 2008, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

**WHEREAS**, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

**WHEREAS**, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

**WHEREAS**, the 2012 OSTs DPEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

**WHEREAS**, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public 2012 OSTs DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the 2012 OSTs DPEIS in light of the regulation; and

**WHEREAS**, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs DPEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the 2012 OSTs DPEIS become the preferred alternative.

#### **RESOLUTION**

NOW THEREFORE, BE IT RESOLVED BY UTAH COUNTY, STATE OF UTAH AS FOLLOWS:

1. Uintah County declares the BLM's continuing to administer and carry out the 2012 OSTs DPEIS, and updating any inventory of lands having wilderness characteristics, to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Uintah County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Uintah County calls upon the BLM to immediately cease and desist all activities related to the 2012 OSTs DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

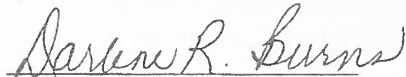


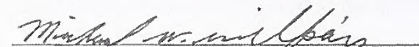
4. Should BLM continue to go forward with the 2012 OSTs DPEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the NO-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. Should BLM decide to flagrantly defy Congress and proceed with the 2012 OSTs DPEIS, it is still obligated under FLPMA to be consistent with State and Local plans to the maximum extent possible;
6. The BLM must cease and desist all activities related to the 2012 OSTs DPEIS because even within its own document the Purpose and Need is unsupportable, arbitrary and a blatant show of conformity to a friendly-lawsuit settlement agreement, which falls out of the public process followed in developing the 2008 OSTs PEIS, and the 2012 OSTs DPEIS omits full and proper analysis of economically viable and technologically advanced extraction methods;
7. Should BLM decide to ignore all of the above and proceed, the BLM should extend the May 4, 2012 deadline for public comment on the 2012 OSTs DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.
8. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of the BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTs DPEIS.

APPROVED AND ADOPTED by a duly constituted quorum of the Board of County Commissioners of Uintah County Commissioners of Uintah County this 9<sup>th</sup> day of April, 2012.

BOARD OF COUNTY COMMISSIONERS  
UINTAH COUNTY, UTAH

ATTEST:

  
Darlene Burns, Chair

  
Michael W. Wilkins, Clerk/Auditor



- 8.16 Uintah County hereby creates an Energy Zone with the county for the purpose of maximizing efficient and responsible development of energy and mineral resources. The land area and boundaries of the Uintah County Energy Zone are described as follows:

Township 2S Range 18E, Township 2S Range 19E, Township 2S Range 20E, Township 2S Range 21E, Township 2S Range 22E, Township 2S Range 23E, Township 2S Range 24E, Township 2N Range 1W, Township 2N Range 1E, Township 2N Range 2E, Township 3S Range 18E, Township 3S Range 19E, Township 3S Range 20E, Township 3S Range 21E, Township 3S Range 22E, Township 3S Range 23E, Township 3S Range 24E, Township 4S Range 19E, Township 4S Range 20E, Township 4S Range 21E, Township 4S Range 22E, Township 4S Range 23E, Township 4S Range 24E, Township 4S Range 25E, Township 5S Range 19E, Township 5S Range 20E, Township 5S Range 21E, Township 5S Range 22E, Township 5S Range 23E, Township 5S Range 24E, Township 5S Range 25E, Township 6S Range 19E, Township 6S Range 20E, Township 6S Range 21E, Township 6S Range 22E, Township 6S Range 23E, Township 6S Range 24E, Township 6S Range 25E, Township 7S Range 19E, Township 7S Range 20E, Township 7S Range 21E, Township 7S Range 22E, Township 7S Range 23E, Township 7S Range 24E, Township 7S Range 25E, Township 8S Range 17E, Township 8S Range 18E, Township 8S Range 19E, Township 8S Range 20E, Township 8S Range 21E, Township 8S Range 22E, Township 8S Range 23E, Township 8S Range 24E, Township 8S Range 25E, Township 9S Range 17E, Township 9S Range 18E, Township 9S Range 19E, Township 9S Range 20E, Township 9S Range 21E, Township 9S Range 22E, Township 9S Range 23E, Township 9S Range 24E, Township 9S Range 25E, Township 10S Range 17E, Township 10S Range 18E, Township 10S Range 19E, Township 10S Range 20E, Township 10S Range 21E, Township 10S Range 22E, Township 10S Range 23E, Township 10S Range 24E, Township 10S Range 25E, Township 11S Range 17E, Township 11S Range 18E, Township 11S Range 19E, Township 11S Range 20E, Township 11S Range 21E, Township 11S Range 22E, Township 11S Range 23E, Township 11S Range 24E, Township 11S Range 25E, Township 12S Range 20E, Township 12S Range 21E, Township 12S Range 22E, Township 12S Range 23E, Township 12S Range 24E, Township 12S Range 25E, Township 13S Range 20E, Township 13S Range 21E, Township 13S Range 22E, Township 13S Range 23E, Township 13S Range 24E, Township 13S Range 25E, Township 13S Range 26 E, Township 14S Range 21E, Township 14S Range 22E, Township 14S Range 23E, Township 14S Range 24E, Township 14S Range 25E, and Township 14S Range 26 E.

These lands contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential; and the highest management priority for all lands within the Uintah Basin Energy Zone is responsible management and development of



existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States of America.

8.17 Uintah County's Plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County:

1. Representatives from Uintah County have observed economically viable technologies for extracting and processing oil shale and oil sands and know that they exist and are applied every day. Similar applicable technologies should immediately be applied today to oil shale and oil sands resources within Uintah County.
2. All lands approved for oil shale and oil sands leasing and development in the 2008 BLM Oil Shale and Tar Sands Programmatic Environmental Impact Statement (2008 OSTs PEIS) should be fully leased and developed for those resources.
3. Further, additional lands in Uintah County should also be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15/gal of oil per ton of ore. Lands with these minimum resource thicknesses and gallonage yield estimates were approved for oil shale and/or oil sands development in Wyoming within the Green River Formation. Similarly situated resources should be subjected to the same approval process.
4. Uintah County requires all applicable Federal agencies to fully comply with The Federal Land Policy and Management Act of 1976, as amended (hereinafter "FLPMA"), by being consistent with State and local plans to the maximum extent possible in managing public lands within Uintah County. Uintah County is committed to insure management of public lands is subject to consistent objective policy and not the political vagaries of the day.<sup>1</sup> Sound

<sup>1</sup> Secretarial Order 3310, dated Dec. 22, 2010 and the 2011 Oil Shale and Tar Sands Programmatic Environmental Impact Statement are perfect examples of an attempted end-run by the Executive around Legislative mandates and a new administration's attempt to undue years of objective sound policy making to satisfy campaign promises. However, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2011 OSTs PEIS, is a patent violation of the funding moratorium against such activities, as found in Section 1769 of the April 21, 2011 Congressional Resolution to Fund Fiscal year 2011 through September 30, 2011, and subsequent Congressional funding measures which perpetuate this moratorium, which states:

For the fiscal year ending September 30, 2011 [and subsequent fiscal years as applicable], none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order 3310 issued by the Secretary of the Interior on December 22, 2010.

The BLM should immediately cease and desist all activities related to the 2011 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS or it will continue to be in contempt of Congress.

consistent management will increase the energy independence of the United States of America and provide local economic stability. Any attempts by a federal agency to not adhere to the plain language of FLPMA requiring consistency with State and local plans will be challenged and if necessary legal action will ensue.

In very recognizable fashion FLPMA created a system of public land management honoring the American philosophy of "laboratories of democracy." In 1932, U.S. Supreme Court Justice Louis Brandeis stated "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (dissenting opinion). Uintah County, a political subdivision of the State of Utah, is exercising its duty under our system of Federalism to try sound novel approaches to manage public lands within its boundaries. Again, it is incumbent on federal agencies to the maximum extent possible be consistent with this plan. Anything short of this constitutes a violation of federal law and is subject to judicial review.

5. Consistent with this Chapter, Uintah County will utilize best available technology to develop a map showing all lands that should be leased and fully developed for oil shale and oil sands in Uintah County. This map will supersede the current State of Utah map showing lands estimated to produce a minimum yield of 25/gal of oil per ton of ore and a copy thereof shall be available for public inspection in the office of the Uintah County Commission.



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S.B. 83

**UINTAH BASIN ENERGY ZONES**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kevin T. Van Tassell**

House Sponsor: John G. Mathis

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**LONG TITLE****General Description:**

This bill modifies Title 63J, Chapter 8, State of Utah Resource Management Plan for Federal Lands, by creating the Uintah Basin Energy Zone.

**Highlighted Provisions:**

This bill:

- ▶ defines the term "Uintah Basin Energy Zone";
- ▶ creates the Uintah Basin Energy Zone;
- ▶ adopts an energy exploration, access, and development policy for the Uintah Basin

Energy Zone, including:

- promoting full, responsible development of energy and mineral resources within the Uintah Basin Energy Zone; and
- achieving and maintaining sustainable levels of energy, hard rock, and natural resources in the Uintah Basin Energy Zone;
- ▶ promotes local, state, and federal collaboration to develop energy and mineral resources in the Uintah Basin Energy Zone; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.

**Utah Code Sections Affected:**

AMENDS:

## S.B. 83

## Enrolled Copy

30            **63J-4-401**, as last amended by Laws of Utah 2009, Chapter 121

31            **63J-8-102**, as enacted by Laws of Utah 2011, Chapter 49

32            **63J-8-105**, as enacted by Laws of Utah 2011, Chapter 49

33    ENACTS:

34            **63J-8-105.5**, Utah Code Annotated 1953

35

36    *Be it enacted by the Legislature of the state of Utah:*

37            Section 1. Section **63J-4-401** is amended to read:

38            **63J-4-401. Planning duties of the planning coordinator and office.**

39            (1) The state planning coordinator shall:

40            (a) act as the governor's adviser on state, regional, metropolitan, and local

41    governmental planning matters relating to public improvements and land use;

42            (b) counsel with the authorized representatives of the Department of Transportation,

43    the State Building Board, the Department of Health, the Department of Workforce Services,

44    the Labor Commission, the Department of Natural Resources, the School and Institutional

45    Trust Lands Administration, and other proper persons concerning all state planning matters;

46            (c) when designated to do so by the governor, receive funds made available to Utah by  
47    the federal government;

48            (d) receive and review plans of the various state agencies and political subdivisions  
49    relating to public improvements and programs;

50            (e) when conflicts occur between the plans and proposals of state agencies, prepare  
51    specific recommendations for the resolution of the conflicts and submit the recommendations  
52    to the governor for a decision resolving the conflict;

53            (f) when conflicts occur between the plans and proposals of a state agency and a  
54    political subdivision or between two or more political subdivisions, advise these entities of the  
55    conflict and make specific recommendations for the resolution of the conflict;

56            (g) act as the governor's planning agent in planning public improvements and land use  
57    and, in this capacity, undertake special studies and investigations;



## Enrolled Copy

S.B. 83

58 (h) provide information and cooperate with the Legislature or any of its committees in  
59 conducting planning studies;

60 (i) cooperate and exchange information with federal agencies and local, metropolitan,  
61 or regional agencies as necessary to assist with federal, state, regional, metropolitan, and local  
62 programs;

63 (j) make recommendations to the governor that the planning coordinator considers  
64 advisable for the proper development and coordination of plans for state government and  
65 political subdivisions; and

66 (k) oversee and supervise the activities and duties of the public lands policy  
67 coordinator.

68 (2) The state planning coordinator may:

69 (a) perform regional and state planning and assist state government planning agencies  
70 in performing state planning;

71 (b) provide planning assistance to Indian tribes regarding planning for Indian  
72 reservations; and

73 (c) assist city, county, metropolitan, and regional planning agencies in performing  
74 local, metropolitan, and regional planning, provided that the state planning coordinator and the  
75 state planning coordinator's agents and designees recognize and promote the plans, policies,  
76 programs, processes, and desired outcomes of each planning agency whenever possible.

77 (3) When preparing or assisting in the preparation of plans, policies, programs, or  
78 processes related to the management or use of federal lands or natural resources on federal  
79 lands in Utah, the state planning coordinator shall:

80 (a) incorporate the plans, policies, programs, processes, and desired outcomes of the  
81 counties where the federal lands or natural resources are located, to the maximum extent  
82 consistent with state and federal law, provided that this requirement shall not be interpreted to  
83 infringe upon the authority of the governor;

84 (b) identify inconsistencies or conflicts between the plans, policies, programs,  
85 processes, and desired outcomes prepared under Subsection (3)(a) and the plans, programs,

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86 processes, and desired outcomes of local government as early in the preparation process as  
87 possible, and seek resolution of the inconsistencies through meetings or other conflict  
88 resolution mechanisms involving the necessary and immediate parties to the inconsistency or  
89 conflict;

90 (c) present to the governor the nature and scope of any inconsistency or other conflict  
91 that is not resolved under the procedures in Subsection (3)(b) for the governor's decision about  
92 the position of the state concerning the inconsistency or conflict;

93 (d) develop, research, and use factual information, legal analysis, and statements of  
94 desired future condition for the state, or subregion of the state, as necessary to support the  
95 plans, policies, programs, processes, and desired outcomes of the state and the counties where  
96 the federal lands or natural resources are located;

97 (e) establish and coordinate agreements between the state and federal land management  
98 agencies, federal natural resource management agencies, and federal natural resource  
99 regulatory agencies to facilitate state and local participation in the development, revision, and  
100 implementation of land use plans, guidelines, regulations, other instructional memoranda, or  
101 similar documents proposed or promulgated for lands and natural resources administered by  
102 federal agencies; and

103 (f) work in conjunction with political subdivisions to establish agreements with federal  
104 land management agencies, federal natural resource management agencies, and federal natural  
105 resource regulatory agencies to provide a process for state and local participation in the  
106 preparation of, or coordinated state and local response to, environmental impact analysis  
107 documents and similar documents prepared pursuant to law by state or federal agencies.

108 (4) The state planning coordinator shall comply with the requirements of Subsection  
109 63C-4-102(8) before submitting any comments on a draft environmental impact statement or  
110 on an environmental assessment for a proposed land management plan, if the governor would  
111 be subject to Subsection 63C-4-102(8) if the governor were submitting the material.

112 (5) The state planning coordinator shall cooperate with and work in conjunction with  
113 appropriate state agencies and political subdivisions to develop policies, plans, programs,



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114 processes, and desired outcomes authorized by this section by coordinating the development of  
115 positions:

116 (a) through the Resource Development Coordinating Committee;

117 (b) in conjunction with local government officials concerning general local government  
118 plans;

119 (c) by soliciting public comment through the Resource Development Coordinating  
120 Committee; and

121 (d) by working with the Public Lands Policy Coordinating Office.

122 (6) The state planning coordinator shall recognize and promote the following principles  
123 when preparing any policies, plans, programs, processes, or desired outcomes relating to  
124 federal lands and natural resources on federal lands pursuant to this section:

125 (a) (i) the citizens of the state are best served by applying multiple-use and  
126 sustained-yield principles in public land use planning and management; and

127 (ii) multiple-use and sustained-yield management means that federal agencies should  
128 develop and implement management plans and make other resource-use decisions that:

129 (A) achieve and maintain in perpetuity a high-level annual or regular periodic output of  
130 mineral and various renewable resources from public lands;

131 (B) support valid existing transportation, mineral, and grazing privileges at the highest  
132 reasonably sustainable levels;

133 (C) support the specific plans, programs, processes, and policies of state agencies and  
134 local governments;

135 (D) are designed to produce and provide the desired vegetation for the watersheds,  
136 timber, food, fiber, livestock forage, and wildlife forage, and minerals that are necessary to  
137 meet present needs and future economic growth and community expansion without permanent  
138 impairment of the productivity of the land;

139 (E) meet the recreational needs and the personal and business-related transportation  
140 needs of the citizens of the state by providing access throughout the state;

141 (F) meet the recreational needs of the citizens of the state;

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- 142 (G) meet the needs of wildlife;
- 143 (H) provide for the preservation of cultural resources, both historical and
- 144 archaeological;
- 145 (I) meet the needs of economic development;
- 146 (J) meet the needs of community development; and
- 147 (K) provide for the protection of water rights;
- 148 (b) managing public lands for "wilderness characteristics" circumvents the statutory
- 149 wilderness process and is inconsistent with the multiple-use and sustained-yield management
- 150 standard that applies to all Bureau of Land Management and U.S. Forest Service lands that are
- 151 not wilderness areas or wilderness study areas;
- 152 (c) all waters of the state are:
- 153 (i) owned exclusively by the state in trust for its citizens;
- 154 (ii) are subject to appropriation for beneficial use; and
- 155 (iii) are essential to the future prosperity of the state and the quality of life within the
- 156 state;
- 157 (d) the state has the right to develop and use its entitlement to interstate rivers;
- 158 (e) all water rights desired by the federal government must be obtained through the
- 159 state water appropriation system;
- 160 (f) land management and resource-use decisions which affect federal lands should give
- 161 priority to and support the purposes of the compact between the state and the United States
- 162 related to school and institutional trust lands;
- 163 (g) development of the solid, fluid, and gaseous mineral resources of the state is an
- 164 important part of the economy of the state, and of local regions within the state;
- 165 (h) the state should foster and support industries that take advantage of the state's
- 166 outstanding opportunities for outdoor recreation;
- 167 (i) wildlife constitutes an important resource and provides recreational and economic
- 168 opportunities for the state's citizens;
- 169 (j) proper stewardship of the land and natural resources is necessary to ensure the



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170 health of the watersheds, timber, forage, and wildlife resources to provide for a continuous  
171 supply of resources for the people of the state and the people of the local communities who  
172 depend on these resources for a sustainable economy;

173 (k) forests, rangelands, timber, and other vegetative resources:  
174 (i) provide forage for livestock;  
175 (ii) provide forage and habitat for wildlife;  
176 (iii) provide resources for the state's timber and logging industries;  
177 (iv) contribute to the state's economic stability and growth; and  
178 (v) are important for a wide variety of recreational pursuits;

179 (l) management programs and initiatives that improve watersheds, forests, and increase  
180 forage for the mutual benefit of wildlife species and livestock, logging, and other agricultural  
181 industries by utilizing proven techniques and tools are vital to the state's economy and the  
182 quality of life in Utah; and

183 (m) (i) land management plans, programs, and initiatives should provide that the  
184 amount of domestic livestock forage, expressed in animal unit months, for permitted, active  
185 use as well as the wildlife forage included in that amount, be no less than the maximum  
186 number of animal unit months sustainable by range conditions in grazing allotments and  
187 districts, based on an on-the-ground and scientific analysis;

188 (ii) the state opposes the relinquishment or retirement of grazing animal unit months in  
189 favor of conservation, wildlife, and other uses;

190 (iii) (A) the state favors the best management practices that are jointly sponsored by  
191 cattlemen's, sportsmen's, and wildlife management groups such as chaining, logging, seeding,  
192 burning, and other direct soil and vegetation prescriptions that are demonstrated to restore  
193 forest and rangeland health, increase forage, and improve watersheds in grazing districts and  
194 allotments for the mutual benefit of domestic livestock and wildlife;

195 (B) when practices described in Subsection (6)(m)(iii)(A) increase a grazing  
196 allotment's forage beyond the total permitted forage use that was allocated to that allotment in  
197 the last federal land use plan or allotment management plan still in existence as of January 1,

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198 2005, a reasonable and fair portion of the increase in forage beyond the previously allocated  
199 total permitted use should be allocated to wildlife as recommended by a joint, evenly balanced  
200 committee of livestock and wildlife representatives that is appointed and constituted by the  
201 governor for that purpose;

202 (C) the state favors quickly and effectively adjusting wildlife population goals and  
203 population census numbers in response to variations in the amount of available forage caused  
204 by drought or other climatic adjustments, and state agencies responsible for managing wildlife  
205 population goals and population census numbers will give due regard to both the needs of the  
206 livestock industry and the need to prevent the decline of species to a point where listing under  
207 the terms of the Endangered Species Act when making such adjustments;

208 (iv) the state opposes the transfer of grazing animal unit months to wildlife for  
209 supposed reasons of rangeland health;

210 (v) reductions in domestic livestock animal unit months must be temporary and  
211 scientifically based upon rangeland conditions;

212 (vi) policies, plans, programs, initiatives, resource management plans, and forest plans  
213 may not allow the placement of grazing animal unit months in a suspended use category unless  
214 there is a rational and scientific determination that the condition of the rangeland allotment or  
215 district in question will not sustain the animal unit months sought to be placed in suspended  
216 use;

217 (vii) any grazing animal unit months that are placed in a suspended use category should  
218 be returned to active use when range conditions improve;

219 (viii) policies, plans, programs, and initiatives related to vegetation management  
220 should recognize and uphold the preference for domestic grazing over alternate forage uses in  
221 established grazing districts while upholding management practices that optimize and expand  
222 forage for grazing and wildlife in conjunction with state wildlife management plans and  
223 programs in order to provide maximum available forage for all uses; and

224 (ix) in established grazing districts, animal unit months that have been reduced due to  
225 rangeland health concerns should be restored to livestock when rangeland conditions improve,



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226 and should not be converted to wildlife use.

227 (7) The state planning coordinator shall recognize and promote the following findings  
228 in the preparation of any policies, plans, programs, processes, or desired outcomes relating to  
229 federal lands and natural resources on federal lands under this section:

230 (a) as a coholder of R.S. 2477 rights-of-way with the counties, the state supports its  
231 recognition by the federal government and the public use of R.S. 2477 rights-of-way and urges  
232 the federal government to fully recognize the rights-of-way and their use by the public as  
233 expeditiously as possible;

234 (b) it is the policy of the state to use reasonable administrative and legal measures to  
235 protect and preserve valid existing rights-of-way granted by Congress under R.S. 2477, and to  
236 support and work in conjunction with counties to redress cases where R.S. 2477 rights-of-way  
237 are not recognized or are impaired; and

238 (c) transportation and access routes to and across federal lands, including all  
239 rights-of-way vested under R.S. 2477, are vital to the state's economy and to the quality of life  
240 in the state, and must provide, at a minimum, a network of roads throughout the resource  
241 planning area that provides for:

242 (i) movement of people, goods, and services across public lands;

243 (ii) reasonable access to a broad range of resources and opportunities throughout the  
244 resource planning area, including:

245 (A) livestock operations and improvements;

246 (B) solid, fluid, and gaseous mineral operations;

247 (C) recreational opportunities and operations, including motorized and nonmotorized  
248 recreation;

249 (D) search and rescue needs;

250 (E) public safety needs; and

251 (F) access for transportation of wood products to market;

252 (iii) access to federal lands for people with disabilities and the elderly; and

253 (iv) access to state lands and school and institutional trust lands to accomplish the

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254 purposes of those lands.

255 (8) The state planning coordinator shall recognize and promote the following findings  
256 in the preparation of any plans, policies, programs, processes, or desired outcomes relating to  
257 federal lands and natural resources on federal lands pursuant to this section:

258 (a) the state's support for the addition of a river segment to the National Wild and  
259 Scenic Rivers System, 16 U.S.C. Sec. 1271 et seq., will be withheld until:

260 (i) it is clearly demonstrated that water is present and flowing at all times;

261 (ii) it is clearly demonstrated that the required water-related value is considered  
262 outstandingly remarkable within a region of comparison consisting of one of the three  
263 physiographic provinces in the state, and that the rationale and justification for the conclusions  
264 are disclosed;

265 (iii) it is clearly demonstrated that the inclusion of each river segment is consistent  
266 with the plans and policies of the state and the county or counties where the river segment is  
267 located as those plans and policies are developed according to Subsection (3);

268 (iv) the effects of the addition upon the local and state economies, agricultural and  
269 industrial operations and interests, outdoor recreation, water rights, water quality, water  
270 resource planning, and access to and across river corridors in both upstream and downstream  
271 directions from the proposed river segment have been evaluated in detail by the relevant federal  
272 agency;

273 (v) it is clearly demonstrated that the provisions and terms of the process for review of  
274 potential additions have been applied in a consistent manner by all federal agencies;

275 (vi) the rationale and justification for the proposed addition, including a comparison  
276 with protections offered by other management tools, is clearly analyzed within the multiple-use  
277 mandate, and the results disclosed;

278 (vii) it is clearly demonstrated that the federal agency with management authority over  
279 the river segment, and which is proposing the segment for inclusion in the National Wild and  
280 Scenic River System will not use the actual or proposed designation as a basis to impose  
281 management standards outside of the federal land management plan;



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282 (viii) it is clearly demonstrated that the terms and conditions of the federal land and  
283 resource management plan containing a recommendation for inclusion in the National Wild  
284 and Scenic River System;

285 (A) evaluates all eligible river segments in the resource planning area completely and  
286 fully for suitability for inclusion in the National Wild and Scenic River System;

287 (B) does not suspend or terminate any studies for inclusion in the National Wild and  
288 Scenic River System at the eligibility phase;

289 (C) fully disclaims any interest in water rights for the recommended segment as a result  
290 of the adoption of the plan; and

291 (D) fully disclaims the use of the recommendation for inclusion in the National Wild  
292 and Scenic River System as a reason or rationale for an evaluation of impacts by proposals for  
293 projects upstream, downstream, or within the recommended segment;

294 (ix) it is clearly demonstrated that the agency with management authority over the river  
295 segment commits not to use an actual or proposed designation as a basis to impose Visual  
296 Resource Management Class I or II management prescriptions that do not comply with the  
297 provisions of Subsection (8)(t); and

298 (x) it is clearly demonstrated that including the river segment and the terms and  
299 conditions for managing the river segment as part of the National Wild and Scenic River  
300 System will not prevent, reduce, impair, or otherwise interfere with:

301 (A) the state and its citizens' enjoyment of complete and exclusive water rights in and  
302 to the rivers of the state as determined by the laws of the state; or

303 (B) local, state, regional, or interstate water compacts to which the state or any county  
304 is a party;

305 (b) the conclusions of all studies related to potential additions to the National Wild and  
306 Scenic River System, 16 U.S.C. Sec. 1271 et seq., are submitted to the state for review and  
307 action by the Legislature and governor, and the results, in support of or in opposition to, are  
308 included in any planning documents or other proposals for addition and are forwarded to the  
309 United States Congress;

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310 (c) the state's support for designation of an Area of Critical Environmental Concern  
311 (ACEC), as defined in 43 U.S.C. Sec. 1702, within federal land management plans will be  
312 withheld until:

313 (i) it is clearly demonstrated that the proposed area satisfies all the definitional  
314 requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec.  
315 1702(a);

316 (ii) it is clearly demonstrated that the area proposed for designation as an ACEC is  
317 limited in geographic size and that the proposed management prescriptions are limited in scope  
318 to the minimum necessary to specifically protect and prevent irreparable damage to the relevant  
319 and important values identified, or limited in geographic size and management prescriptions to  
320 the minimum required to specifically protect human life or safety from natural hazards;

321 (iii) it is clearly demonstrated that the proposed area is limited only to areas that are  
322 already developed or used or to areas where no development is required;

323 (iv) it is clearly demonstrated that the proposed area contains relevant and important  
324 historic, cultural or scenic values, fish or wildlife resources, or natural processes which are  
325 unique or substantially significant on a regional basis, or contain natural hazards which  
326 significantly threaten human life or safety;

327 (v) the federal agency has analyzed regional values, resources, processes, or hazards for  
328 irreparable damage and its potential causes resulting from potential actions which are  
329 consistent with the multiple-use, sustained-yield principles, and the analysis describes the  
330 rationale for any special management attention required to protect, or prevent irreparable  
331 damage to the values, resources, processes, or hazards;

332 (vi) it is clearly demonstrated that the proposed designation is consistent with the plans  
333 and policies of the state and of the county where the proposed designation is located as those  
334 plans and policies are developed according to Subsection (3);

335 (vii) it is clearly demonstrated that the proposed ACEC designation will not be applied  
336 redundantly over existing protections provided by other state and federal laws for federal lands  
337 or resources on federal lands, and that the federal statutory requirement for special management



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338 attention for a proposed ACEC will discuss and justify any management requirements needed  
339 in addition to those specified by the other state and federal laws;

340 (viii) the difference between special management attention required for an ACEC and  
341 normal multiple-use management has been identified and justified, and that any determination  
342 of irreparable damage has been analyzed and justified for short and long-term horizons;

343 (ix) it is clearly demonstrated that the proposed designation:

344 (A) is not a substitute for a wilderness suitability recommendation;

345 (B) is not a substitute for managing areas inventoried for wilderness characteristics  
346 after 1993 under the BLM interim management plan for valid wilderness study areas; and

347 (C) it is not an excuse or justification to apply de facto wilderness management  
348 standards; and

349 (x) the conclusions of all studies are submitted to the state, as a cooperating agency, for  
350 review, and the results, in support of or in opposition to, are included in all planning  
351 documents;

352 (d) sufficient federal lands are made available for government-to-government  
353 exchanges of school and institutional trust lands and federal lands without regard for a  
354 resource-to-resource correspondence between the surface or mineral characteristics of the  
355 offered trust lands and the offered federal lands;

356 (e) federal agencies should support government-to-government exchanges of land with  
357 the state based on a fair process of valuation which meets the fiduciary obligations of both the  
358 state and federal governments toward trust lands management, and which assures that revenue  
359 authorized by federal statute to the state from mineral or timber production, present or future, is  
360 not diminished in any manner during valuation, negotiation, or implementation processes;

361 (f) agricultural and grazing lands should continue to produce the food and fiber needed  
362 by the citizens of the state and the nation, and the rural character and open landscape of rural  
363 Utah should be preserved through a healthy and active agricultural and grazing industry,  
364 consistent with private property rights and state fiduciary duties;

365 (g) the resources of the forests and rangelands of the state should be integrated as part

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366 of viable, robust, and sustainable state and local economies, and available forage should be  
367 evaluated for the full complement of herbivores the rangelands can support in a sustainable  
368 manner, and forests should contain a diversity of timber species, and disease or insect  
369 infestations in forests should be controlled using logging or other best management practices;

370 (h) the state opposes any additional evaluation of national forest service lands as  
371 "roadless" or "unroaded" beyond the forest service's second roadless area review evaluation and  
372 opposes efforts by agencies to specially manage those areas in a way that:

373 (i) closes or declassifies existing roads unless multiple side by side roads exist running  
374 to the same destination and state and local governments consent to close or declassify the extra  
375 roads;

376 (ii) permanently bars travel on existing roads;

377 (iii) excludes or diminishes traditional multiple-use activities, including grazing and  
378 proper forest harvesting;

379 (iv) interferes with the enjoyment and use of valid, existing rights, including water  
380 rights, local transportation plan rights, R.S. 2477 rights, grazing allotment rights, and mineral  
381 leasing rights; or

382 (v) prohibits development of additional roads reasonably necessary to pursue  
383 traditional multiple-use activities;

384 (i) the state's support for any forest plan revision or amendment will be withheld until  
385 the appropriate plan revision or plan amendment clearly demonstrates that:

386 (i) established roads are not referred to as unclassified roads or a similar classification;

387 (ii) lands in the vicinity of established roads are managed under the multiple-use,  
388 sustained-yield management standard; and

389 (iii) no roadless or unroaded evaluations or inventories are recognized or upheld  
390 beyond those that were recognized or upheld in the forest service's second roadless area review  
391 evaluation;

392 (j) the state's support for any recommendations made under the statutory requirement to  
393 examine the wilderness option during the revision of land and resource management plans by



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394 the U.S. Forest Service will be withheld until it is clearly demonstrated that:

395 (i) the duly adopted transportation plans of the state and county or counties within the

396 planning area are fully and completely incorporated into the baseline inventory of information

397 from which plan provisions are derived;

398 (ii) valid state or local roads and rights-of-way are recognized and not impaired in any

399 way by the recommendations;

400 (iii) the development of mineral resources by underground mining is not affected by

401 the recommendations;

402 (iv) the need for additional administrative or public roads necessary for the full use of

403 the various multiple-uses, including recreation, mineral exploration and development, forest

404 health activities, and grazing operations is not unduly affected by the recommendations;

405 (v) analysis and full disclosure is made concerning the balance of multiple-use

406 management in the proposed areas, and that the analysis compares the full benefit of

407 multiple-use management to the recreational, forest health, and economic needs of the state and

408 the counties to the benefits of the requirements of wilderness management; and

409 (vi) the conclusions of all studies related to the requirement to examine the wilderness

410 option are submitted to the state for review and action by the Legislature and governor, and the

411 results, in support of or in opposition to, are included in any planning documents or other

412 proposals that are forwarded to the United States Congress;

413 (k) the invasion of noxious weeds and undesirable invasive plant species into the state

414 should be reversed, their presence eliminated, and their return prevented;

415 (l) management and resource-use decisions by federal land management and regulatory

416 agencies concerning the vegetative resources within the state should reflect serious

417 consideration of the proper optimization of the yield of water within the watersheds of the

418 state;

419 (m) (i) it is the policy of the state that:

420 (A) mineral and energy production and environmental protection are not mutually

421 exclusive;

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- 422 (B) it is technically feasible to permit appropriate access to mineral and energy  
423 resources while preserving nonmineral and nonenergy resources;
- 424 (C) resource management planning should seriously consider all available mineral and  
425 energy resources;
- 426 (D) the development of the solid, fluid, and gaseous mineral resources of the state and  
427 the renewable resources of the state should be encouraged;
- 428 (E) the waste of fluid and gaseous minerals within developed areas should be  
429 prohibited; and
- 430 (F) requirements to mitigate or reclaim mineral development projects should be based  
431 on credible evidence of significant impacts to natural or cultural resources;
- 432 (ii) the state's support for mineral development provisions within federal land  
433 management plans will be withheld until the appropriate land management plan environmental  
434 impact statement clearly demonstrates:
- 435 (A) that the authorized planning agency has:
- 436 (I) considered and evaluated the mineral and energy potential in all areas of the  
437 planning area as if the areas were open to mineral development under standard lease  
438 agreements; and
- 439 (II) evaluated any management plan prescription for its impact on the area's baseline  
440 mineral and energy potential;
- 441 (B) that the development provisions do not unduly restrict access to public lands for  
442 energy exploration and development;
- 443 (C) that the authorized planning agency has supported any closure of additional areas  
444 to mineral leasing and development or any increase of acres subject to no surface occupancy  
445 restrictions by adhering to:
- 446 (I) the relevant provisions of the Federal Land Policy and Management Act of 1976, 43  
447 U.S.C. Sec. 1701 et seq.;
- 448 (II) other controlling mineral development laws; and
- 449 (III) the controlling withdrawal and reporting procedures set forth in the Federal Land



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450 Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.;

451 (D) that the authorized planning agency evaluated whether to repeal any moratorium  
452 that may exist on the issuance of additional mining patents and oil and gas leases;

453 (E) that the authorized planning agency analyzed all proposed mineral lease  
454 stipulations and considered adopting the least restrictive necessary to protect against damage to  
455 other significant resource values;

456 (F) that the authorized planning agency evaluated mineral lease restrictions to  
457 determine whether to waive, modify, or make exceptions to the restrictions on the basis that  
458 they are no longer necessary or effective;

459 (G) that the authorized federal agency analyzed all areas proposed for no surface  
460 occupancy restrictions, and that the analysis evaluated:

461 (I) whether directional drilling is economically feasible and ecologically necessary for  
462 each proposed no surface occupancy area;

463 (II) whether the directional drilling feasibility analysis, or analysis of other  
464 management prescriptions, demonstrates that the proposed no surface occupancy prescription,  
465 in effect, sterilizes the mineral and energy resources beneath the area; and

466 (III) whether, if the minerals are effectively sterilized, the area must be reported as  
467 withdrawn under the provisions of the Federal Land Policy and Management Act; and

468 (H) that the authorized planning agency has evaluated all directional drilling  
469 requirements in no surface occupancy areas to determine whether directional drilling is feasible  
470 from an economic, ecological, and engineering standpoint;

471 (n) motorized, human, and animal-powered outdoor recreation should be integrated  
472 into a fair and balanced allocation of resources within the historical and cultural framework of  
473 multiple-uses in rural Utah, and outdoor recreation should be supported as part of a balanced  
474 plan of state and local economic support and growth;

475 (o) off-highway vehicles should be used responsibly, the management of off-highway  
476 vehicles should be uniform across all jurisdictions, and laws related to the use of off-highway  
477 vehicles should be uniformly applied across all jurisdictions;

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478           (p) (i) rights-of-way granted and vested under the provisions of R.S. 2477 should be  
479 preserved and acknowledged;

480           (ii) land use management plans, programs, and initiatives should be consistent with  
481 both state and county transportation plans developed according to Subsection (3) in order to  
482 provide a network of roads throughout the planning area that provides for:

483           (A) movement of people, goods, and services across public lands;

484           (B) reasonable access to a broad range of resources and opportunities throughout the  
485 planning area, including access to livestock, water, and minerals;

486           (C) economic and business needs;

487           (D) public safety;

488           (E) search and rescue;

489           (F) access for people with disabilities and the elderly;

490           (G) access to state lands; and

491           (H) recreational opportunities;

492           (q) transportation and access provisions for all other existing routes, roads, and trails  
493 across federal, state, and school trust lands within the state should be determined and  
494 identified, and agreements should be executed and implemented, as necessary to fully authorize  
495 and determine responsibility for maintenance of all routes, roads, and trails;

496           (r) the reasonable development of new routes and trails for motorized, human, and  
497 animal-powered recreation should be implemented;

498           (s) (i) forests, rangelands, and watersheds, in a healthy condition, are necessary and  
499 beneficial for wildlife, livestock grazing, and other multiple-uses;

500           (ii) management programs and initiatives that are implemented to increase forage for  
501 the mutual benefit of the agricultural industry, livestock operations, and wildlife species should  
502 utilize all proven techniques and tools;

503           (iii) the continued viability of livestock operations and the livestock industry should be  
504 supported on the federal lands within the state by management of the lands and forage  
505 resources, by the proper optimization of animal unit months for livestock, in accordance with



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the multiple-use provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., the provisions of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq., and the provisions of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901 et seq.;

(iv) provisions for predator control initiatives or programs under the direction of state and local authorities should be implemented; and

(v) resource-use and management decisions by federal land management and regulatory agencies should support state-sponsored initiatives or programs designed to stabilize wildlife populations that may be experiencing a scientifically demonstrated decline in those populations; and

(t) management and resource use decisions by federal land management and regulatory agencies concerning the scenic resources of the state must balance the protection of scenery with the full management requirements of the other authorized uses of the land under multiple-use management, and should carefully consider using Visual Resource Management Class I protection only for areas of inventoried Class A scenery or equivalent.

(9) Notwithstanding any provision of Section 63J-8-105.5, the state is committed to establishing and administering an effective statewide conservation strategy for greater sage grouse.

~~[(9)]~~ (10) Nothing contained in this section may be construed to restrict or supersede the planning powers conferred upon state departments, agencies, instrumentalities, or advisory councils of the state or the planning powers conferred upon political subdivisions by any other existing law.

~~[(10)]~~ (11) Nothing in this section may be construed to affect any lands withdrawn from the public domain for military purposes, which are administered by the United States Army, Air Force, or Navy.

Section 2. Section **63J-8-102** is amended to read:

**63J-8-102. Definitions.**

As used in this chapter:

(1) "ACEC" means an area of critical environmental concern.

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- 534 (2) "AUM" means animal unit months, a unit of grazing forage.
- 535 (3) "BLM" means the United States Bureau of Land Management.
- 536 (4) "FLPMA" means the Federal Land Policy Management Act of 1976, 43 U.S.C. Sec.
- 537 1701 et seq.
- 538 (5) "Forest service" means the United States Forest Service within the United States
- 539 Department of Agriculture.
- 540 (6) "Multiple use" means proper stewardship of the subject lands pursuant to Section
- 541 1031(C) of FLPMA, 43 U.S.C. Sec. 170(C).
- 542 (7) "OHV" means off-highway vehicle as defined in Section 41-22-2.
- 543 (8) "Settlement Agreement" means the written agreement between the state and the
- 544 Department of the Interior in 2003 (revised in 2005) that resolved the case of State of Utah v.
- 545 Gale Norton, Secretary of Interior (United States District Court, D. Utah, Case No.
- 546 2:96cv0870).
- 547 (9) "SITLA" means the School and Institutional Trust Lands Administration as created
- 548 in Section 53C-1-201.
- 549 (10) (a) "Subject lands" means the following non-WSA BLM lands:
- 550 (i) in Beaver County:
- 551 (A) Mountain Home Range South, Jackson Wash, The Toad, North Wah Wah
- 552 Mountains, Central Wah Wah Mountains, and San Francisco Mountains according to the
- 553 region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal
- 554 for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage
- 555 existed on February 17, 2011; and
- 556 (B) White Rock Range, South Wah Wah Mountains, and Granite Peak according to the
- 557 region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for
- 558 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage
- 559 existed on February 17, 2011;
- 560 (ii) in Box Elder County: Little Goose Creek, Grouse Creek Mountains North, Grouse
- 561 Creek Mountains South, Bald Eagle Mountain, Central Pilot Range, Pilot Peak, Crater Island



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562 West, Crater Island East, Newfoundland Mountains, and Grassy Mountains North according to  
563 the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's Proposal  
564 for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
565 existed on February 17, 2011;

566 (iii) in Carbon County: Desbrough Canyon and Turtle Canyon according to the region  
567 map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in  
568 Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on  
569 February 17, 2011;

570 (iv) in Daggett County: Goslin Mountain, Home Mountain, Red Creek Badlands,  
571 O-wi-yu-kuts, Lower Flaming Gorge, Crouse Canyon, and Diamond Breaks according to the  
572 region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for  
573 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
574 existed on February 17, 2011;

575 (v) in Duchesne County: Desbrough Canyon according to the region map entitled  
576 "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at  
577 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
578 2011;

579 (vi) in Emery County:

580 (A) San Rafael River and Sweetwater Reef, according to the region map entitled  
581 "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in  
582 Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on  
583 February 17, 2011;

584 (B) Flat Tops according to the region map entitled "Glen Canyon," which is available  
585 by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for  
586 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
587 existed on February 17, 2011; and

588 (C) Price River, Lost Spring Wash, Eagle Canyon, Upper Muddy Creek, Molen Reef,  
589 Rock Canyon, Mussentuchit Badland, and Muddy Creek, according to the region map entitled

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590 "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah"  
591 at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
592 2011;

593 (vii) in Garfield County:

594 (A) Pole Canyon, according to the region map entitled "Great Basin South" linked in  
595 the webpage entitled "Citizen's Proposal for Wilderness in Utah" at  
596 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
597 2011;

598 (B) Dirty Devil, Fiddler Butte, Little Rockies, Cane Spring Desert, and Cane Spring  
599 Desert Adjacents, according to the region map entitled "Glen Canyon," which is available by  
600 clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for  
601 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
602 existed on February 17, 2011;

603 (C) Lampstand, Wide Hollow, Steep Creek, Brinkerhof Flats, Little Valley Canyon,  
604 Death Hollow, Studhorse Peaks, Box Canyon, Heaps Canyon, North Escalante Canyon, Colt  
605 Mesa, East of Bryce, Slopes of Canaan Peak, Horse Spring Canyon, Muley Twist Flank,  
606 Pioneer Mesa, Slopes of Bryce, Blue Hills, Mud Springs Canyon, Carcass Canyon, Willis  
607 Creek North, Kodachrome Basin, and Kodachrome Headlands, according to the region map  
608 entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for  
609 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
610 existed on February 17, 2011; and

611 (D) Notom Bench, Mount Ellen, Bull Mountain, Dogwater Creek, Ragged Mountain,  
612 Mount Pennell, Mount Hillers, Bullfrog Creek, and Long Canyon, according to the region map  
613 entitled "Henry Mountains" linked at the webpage entitled "Citizen's Proposal for Wilderness  
614 in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on  
615 February 17, 2011;

616 (viii) in Iron County: Needle Mountains, Steamboat Mountain, Broken Ridge, Paradise  
617 Mountains, Crook Canyon, Hamlin, North Peaks, Mount Escalante, and Antelope Ridge,



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618 according to the region map entitled "Great Basin South" linked in the webpage entitled  
619 "Citizen's Proposal for Wilderness in Utah" at  
620 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
621 2011;

622 (ix) in Juab County: Deep Creek Mountains, Essex Canyon, Kern Mountains, Wild  
623 Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Fish  
624 Springs Ridge, Thomas Range, Drum Mountains, Dugway Mountains, Keg Mountains West,  
625 Keg Mountains East, Lion Peak, and Rockwell Little Sahara, according to the region map  
626 entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for  
627 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
628 existed on February 17, 2011;

629 (x) in Kane County:

630 (A) Willis Creek North, Willis Creek, Kodachrome Badlands, Mud Springs Canyon,  
631 Carcass Canyon, Scorpion, Bryce Boot, Paria-Hackberry Canyons, Fiftymile Canyon,  
632 Hurricane Wash, Upper Kanab Creek, Timber Mountain, Nephi Point, Paradise Canyon,  
633 Wahweap Burning Hills, Fiftymile Bench, Forty Mile Gulch, Sooner Bench 1, 2, & 3, Rock  
634 Cove, Warm Bench, Andalex Not, Vermillion Cliffs, Ladder Canyon, The Cockscomb, Nipple  
635 Bench, Moquith Mountain, Bunting Point, Glass Eye Canyon, and Pine Hollow, according to  
636 the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's  
637 Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the  
638 webpage existed on February 17, 2011; and

639 (B) Orderville Canyon, Jolley Gulch, and Parunuweap Canyon, according to the region  
640 map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness  
641 in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on  
642 February 17, 2011;

643 (xi) in Millard County: Kern Mountains, Wild Horse Pass, Disappointment Hills,  
644 Granite Mountain, Middle Mountains, Tule Valley, Swasey Mountain, Little Drum Mountains  
645 North, Little Drum Mountains South, Drum Mountains, Snake Valley, Coyote Knoll, Howell

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646 Peak, Tule Valley South, Ledger Canyon, Chalk Knolls, Orr Ridge, Notch View, Bullgrass  
647 Knoll, Notch Peak, Barn Hills, Cricket Mountains, Burbank Pass, Middle Burbank Hills, King  
648 Top, Barn Hills, Red Tops, Middle Burbank Hills, Juniper, Painted Rock Mountain, Black  
649 Hills, Tunnel Springs, Red Canyon, Sand Ridge, Little Sage Valley, Cat Canyon, Headlight  
650 Mountain, Black Hills, Mountain Range Home North, Tweedy Wash, North Wah Wah  
651 Mountains, Jackson Wash, and San Francisco Mountains, according to the region map entitled  
652 "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in  
653 Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on  
654 February 17, 2011;

655 (xii) in Piute County: Kingston Ridge, Rocky Ford, and Phonolite Hill, according to  
656 the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal  
657 for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
658 existed on February 17, 2011;

659 (xiii) in San Juan County:

660 (A) Horseshoe Point, Deadhorse Cliffs, Gooseneck, Demon's Playground, Hatch  
661 Canyon, Lockhart Basin, Indian Creek, Hart's Point, Butler Wash, Bridger Jack Mesa, and Shay  
662 Mountain, according to the region map entitled "Canyonlands Basin" linked in the webpage  
663 entitled "Citizen's Proposal for Wilderness in Utah" at  
664 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
665 2011;

666 (B) Dark Canyon, Copper Point, Fortknocker Canyon, White Canyon, The Needle, Red  
667 Rock Plateau, Upper Red Canyon, and Tuwa Canyon, according to the region map entitled  
668 "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage  
669 entitled "Citizen's Proposal for Wilderness in Utah" at  
670 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
671 2011;

672 (C) Hunters Canyon, Behind the Rocks, Mill Creek, and Coyote Wash, according to  
673 the region map entitled "Moab/La Sal" linked at the webpage entitled "Citizen's Proposal for



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674 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
675 existed on February 17, 2011; and

676 (D) Hammond Canyon, Allen Canyon, Mancos Jim Butte, Arch Canyon, Monument  
677 Canyon, Tin Cup Mesa, Cross Canyon, Nokai Dome, Grand Gulch, Fish and Owl Creek  
678 Canyons, Comb Ridge, Road Canyon, The Tabernacle, Lime Creek, San Juan River, and  
679 Valley of the Gods, according to the region map entitled "San Juan" linked at the webpage  
680 entitled "Citizen's Proposal for Wilderness in Utah" at  
681 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
682 2011;

683 (xiv) in Sevier County: Rock Canyon, Mussentuchit Badland, Limestone Cliffs, and  
684 Jones' Bench, according to the region map entitled "San Rafael Swell" linked at the webpage  
685 entitled "Citizen's Proposal for Wilderness in Utah" at  
686 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
687 2011;

688 (xv) in Tooele County:

689 (A) Silver Island Mountains, Crater Island East, Grassy Mountains North, Grassy  
690 Mountains South, Stansbury Island, Cedar Mountains North, Cedar Mountains Central, Cedar  
691 Mountains South, North Stansbury Mountains, Oquirrh Mountains, and Big Hollow, according  
692 to the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's  
693 Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the  
694 webpage existed on February 17, 2011, excluding the areas that Congress designated as  
695 wilderness under the National Defense Authorization Act for Fiscal Year 2006; and

696 (B) Ochre Mountain, Deep Creek Mountains, Dugway Mountains, Indian Peaks, and  
697 Lion Peak, according to the region map entitled "Great Basin Central" linked in the webpage  
698 entitled "Citizen's Proposal for Wilderness in Utah" at  
699 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
700 2011;

701 (xvi) in Uintah County:

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702 (A) White River, Lower Bitter Creek, Sunday School Canyon, Dragon Canyon, Wolf  
703 Point, Winter Ridge, Seep Canyon, Bitter Creek, Hideout Canyon, Sweetwater Canyon, and  
704 Hell's Hole, according to the region map entitled "Book Cliffs" linked in the webpage entitled  
705 "Citizen's Proposal for Wilderness in Utah" at  
706 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
707 2011; and

708 (B) Lower Flaming Gorge, Crouse Canyon Stone Bridge Draw, Diamond Mountain,  
709 Wild Mountain, Split Mountain Benches, Vivas Cake Hill, Split Mountain Benches South,  
710 Beach Draw, Stuntz Draw, Moonshine Draw, Bourdette Draw, and Bull Canyon, according to  
711 the region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for  
712 Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
713 existed on February 17, 2011;

714 (xvii) in Washington County: Cougar Canyon, Docs Pass, Slaughter Creek, Butcher  
715 Knife Canyon, Square Top, Scarecrow Creek, Beaver Dam Wash, Beaver Dam Mountains  
716 North, Beaver Dam Mountains South, Joshua Tree, Beaver Dam Wilderness Expansion, Red  
717 Mountain, Cottonwood Canyon, Taylor Canyon, LaVerkin Creek, Beartrap Canyon, Deep  
718 Creek, Black Ridge, Red Butte, Kolob Creek, Goose Creek, Dry Creek, Zion National Park  
719 Adjacents, Crater Hill, The Watchman, and Canaan Mountain, according to the region map  
720 entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in  
721 Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on  
722 February 17, 2011, excluding the areas that Congress designated as wilderness and  
723 conservation areas under the Omnibus Public Lands Management Act of 2009; and

724 (xviii) in Wayne County:

725 (A) Sweetwater Reef, Upper Horseshoe Canyon, and Labyrinth Canyon, according to  
726 the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal  
727 for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage  
728 existed on February 17, 2011;

729 (B) Flat Tops and Dirty Devil, according to the region map entitled "Glen Canyon,"



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730 which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's  
731 Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the  
732 webpage existed on February 17, 2011;

733 (C) Fremont Gorge, Pleasant Creek Bench, Notom Bench, Mount Ellen, and Bull  
734 Mountain, according to the region map entitled "Henry Mountains" linked at the webpage  
735 entitled "Citizen's Proposal for Wilderness in Utah" at  
736 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
737 2011; and

738 (D) Capital Reef Adjacents, Muddy Creek, Wild Horse Mesa, North Blue Flats, Red  
739 Desert, and Factory Butte, according to the region map entitled "San Rafael Swell" linked at  
740 the webpage entitled "Citizen's Proposal for Wilderness in Utah" at  
741 <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17,  
742 2011.

743 (b) "Subject lands" also includes all BLM and Forest Service lands in the state that are  
744 not Wilderness Area or Wilderness Study Areas;

745 (c) "Subject lands" does not include the following lands that are the subject of  
746 consideration for a possible federal lands bill and should be managed according to the 2008  
747 Price BLM Field Office Resource Management Plan until a federal lands bill provides  
748 otherwise;

749 (i) Turtle Canyon and Desolation Canyon according to the region map entitled "Book  
750 Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at  
751 <http://protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

752 (ii) Labyrinth Canyon, Duma Point, and Horseshoe Point, according to the region map  
753 entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness  
754 in Utah" at <http://protectwildutah.org/proposal/index.html> as the webpage existed on February  
755 17, 2011; and

756 (iii) Devil's Canyon, Sid's Mountain, Mexican Mountain, San Rafael Reef, Hondu  
757 Country, Cedar Mountain, and Wild Horse, according to the region map entitled "San Rafael

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758 Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at  
759 <http://protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011[+].

760 (11) "Uintah Basin Energy Zone" means BLM, Forest Service, and SITLA lands  
761 situated in the following townships in Daggett, Duchesne, and Uintah counties, as more fully  
762 illustrated in the map prepared by the Uintah County GIS Department in February 2012 entitled  
763 "Uintah Basin Utah Energy Zone":

764 (a) in Daggett County, Township 3N Range 17 E, Township 3N Range 18E, Township  
765 3N Range 19E, Township 3N Range 20E, Township 3N Range 22E, Township 3N Range 23E,  
766 Township 3N Range 24E, Township 3N Range 25E, Township 2N Range 17E, Township 2N  
767 Range 18E, Township 2N Range 19E, Township 2N Range 20E, Township 2N Range 21E, and  
768 Township 2S Range 25E;

769 (b) in Duchesne County, Township 3N Range 4W, Township 3N Range 3W, Township  
770 3N Range 2W, Township 3N Range 1W, Township 2N Range 6W, Township 2N Range 5W,  
771 Township 2N Range 4W, Township 2N Range 3W, Township 2N Range 1W, Township 1N  
772 Range 9W, Township 1N Range 8W, Township 1N Range 7W, Township 1N Range 6W,  
773 Township 1S Range 9W, Township 1S Range 8W, Township 4S Range 9W, Township 4S  
774 Range 3W, Township 4S Range 2W, Township 4S Range 1W, Township 8S Range 15E,  
775 Township 8S Range 16E, Township 8S Range 17E, Township 5S Range 9W, Township 5S  
776 Range 3W, Township 9S Range 15E, Township 9S Range 16E, Township 9S Range 17E,  
777 Township 6S Range 9W, Township 6S Range 8W, Township 6S Range 7W, Township 6S  
778 Range 6W, Township 6S Range 5W, Township 6S Range 3W, Township 10S Range 15E,  
779 Township 10S Range 16E, Township 10S Range 17E, Township 7S Range 9W, Township 7S  
780 Range 8W, Township 7S Range 7W, Township 7S Range 6W, Township 7S Range 5W,  
781 Township 7S Range 4W, Township 10S Range 11E, Township 10S Range 12E, Township 10S  
782 Range 13E, Township 10S Range 14E, Township 10S Range 15E, Township 10S Range 16E,  
783 Township 10S Range 17E, Township 11S Range 10E, Township 11S Range 11E, Township  
784 11S Range 12E, Township 11S Range 13E, Township 11S Range 14E, Township 11S Range  
785 15E, Township 11S Range 16E, and Township 11S Range 17E; and



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786 (c) in Uintah County: Township 2S Range 18E, Township 2S Range 19E, Township  
 787 2S Range 20E, Township 2S Range 21E, Township 2S Range 22E, Township 2S Range 23E,  
 788 Township 2S Range 24E, Township 2N Range 1W, Township 2N Range 1E, Township 2N  
 789 Range 2E, Township 3S Range 18E, Township 3S Range 19E, Township 3S Range 20E,  
 790 Township 3S Range 21E, Township 3S Range 22E, Township 3S Range 23E, Township 3S  
 791 Range 24E, Township 4S Range 19E, Township 4S Range 20E, Township 4S Range 21E,  
 792 Township 4S Range 22E, Township 4S Range 23E, Township 4S Range 24E, Township 4S  
 793 Range 25E, Township 5S Range 19E, Township 5S Range 20E, Township 5S Range 21E,  
 794 Township 5S Range 22E, Township 5S Range 23E, Township 5S Range 24E, Township 5S  
 795 Range 25E, Township 6S Range 19E, Township 6S Range 20E, Township 6S Range 21E,  
 796 Township 6S Range 22E, Township 6S Range 23E, Township 6S Range 24E, Township 6S  
 797 Range 25E, Township 7S Range 19E, Township 7S Range 20E, Township 7S Range 21E,  
 798 Township 7S Range 22E, Township 7S Range 23E, Township 7S Range 24E, Township 7S  
 799 Range 25E, Township 8S Range 17E, Township 8S Range 18E, Township 8S Range 19E,  
 800 Township 8S Range 20E, Township 8S Range 21E, Township 8S Range 22E, Township 8S  
 801 Range 23E, Township 8S Range 24E, Township 8S Range 25E, Township 9S Range 17E,  
 802 Township 9S Range 18E, Township 9S Range 19E, Township 9S Range 20E, Township 9S  
 803 Range 21E, Township 9S Range 22E, Township 9S Range 23E, Township 9S Range 24E,  
 804 Township 9S Range 25E, Township 10S Range 17E, Township 10S Range 18E, Township 10S  
 805 Range 19E, Township 10S Range 20E, Township 10S Range 21E, Township 10S Range 22E,  
 806 Township 10S Range 23E, Township 10S Range 24E, Township 10S Range 25E, Township  
 807 11S Range 17E, Township 11S Range 18E, Township 11S Range 19E, Township 11S Range  
 808 20E, Township 11S Range 21E, Township 11S Range 22E, Township 11S Range 23E,  
 809 Township 11S Range 24E, Township 11S Range 25E, Township 12S Range 20E, Township  
 810 12S Range 21E, Township 12S Range 22E, Township 12S Range 23E, Township 12S Range  
 811 24E, Township 12S Range 25E, Township 13S Range 20E, Township 13S Range 21E,  
 812 Township 13S Range 22E, Township 13S Range 23E, Township 13S Range 24E, Township  
 813 13S Range 25E, Township 13S Range 26 E, Township 14S Range 21E, Township 14S Range

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814 22E, Township 14S Range 23E, Township 14S Range 24E, Township 14S Range 25E, and  
815 Township 14S Range 26E.

816 ~~[(11)]~~ (12) "Wilderness area" means those BLM and Forest Service lands added to the  
817 National Wilderness Preservation System by an act of Congress.

818 ~~[(12)]~~ (13) "WSA" and "Wilderness Study Area" mean the BLM lands in Utah that  
819 were identified as having the necessary wilderness character and were classified as wilderness  
820 study areas during the BLM wilderness review conducted between 1976 and 1993 by authority  
821 of Section 603 of FLPMA and labeled as Wilderness Study Areas within the final report of the  
822 President of the United States to the United States Congress in 1993.

823 Section 3. Section **63J-8-105** is amended to read:

824 **63J-8-105. Maps available for public review.**

825 A printed copy of the maps referenced in ~~[Subsection]~~ Subsections 63J-8-102(10) and  
826 (11) shall be available for inspection by the public at the offices of the Utah Association of  
827 Counties.

828 Section 4. Section **63J-8-105.5** is enacted to read:

829 **63J-8-105.5. Uintah Basin Energy Zone established -- Findings -- Management**  
830 **and land use priorities.**

831 (1) There is established the Uintah Basin Energy Zone in Daggett, Uintah, and  
832 Duchesne Counties for the purpose of maximizing efficient and responsible development of  
833 energy and mineral resources.

834 (2) The land area and boundaries of the Uintah Basin Energy Zone are described in  
835 Subsection 63J-8-102(11) and illustrated on the map described in Section 63J-8-105.

836 (3) The state finds that:

837 (a) the lands comprising the Uintah Basin Energy Zone contain abundant, world-class  
838 deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands,  
839 gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar  
840 energy potential; and

841 (b) the highest management priority for all lands within the Uintah Basin Energy Zone



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842 is responsible management and development of existing energy and mineral resources in order  
843 to provide long-term domestic energy and supplies for Utah and the United States.

844 (4) The state supports:

845 (a) efficient and responsible full development of all existing energy and mineral  
846 resources located within the Uintah Basin Energy Zone, including oil, oil shale, natural gas, oil  
847 sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources; and

848 (b) a cooperative management approach among federal agencies, state, and local  
849 governments to achieve broadly supported management plans for the full development of all  
850 energy and mineral resources within the Uintah Basin Energy Zone.

851 (5) The state calls upon the federal agencies who administer lands within the Uintah  
852 Basin Energy Zone to:

853 (a) fully cooperate and coordinate with the state and with Daggett, Uintah, and  
854 Duchesne Counties to develop, amend, and implement land and resource management plans  
855 and to implement management decisions that are consistent with the purposes, goals, and  
856 policies described in this section to the maximum extent allowed under federal law;

857 (b) expedite the processing, granting, and streamlining of mineral and energy leases  
858 and applications to drill, extract, and otherwise develop all existing energy and mineral  
859 resources located within the Uintah Basin Energy Zone, including oil, natural gas, oil shale, oil  
860 sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources;

861 (c) allow continued maintenance and increased development of roads, power lines,  
862 pipeline infrastructure, and other utilities necessary to achieve the goals, purposes, and policies  
863 described in this section;

864 (d) refrain from any planning decisions and management actions that will undermine,  
865 restrict, or diminish the goals, purposes, and policies for the Uintah Basin Energy Zone as  
866 stated in this section; and

867 (e) refrain from implementing a policy that is contrary to the goals and purposes  
868 described within this section.

869 (6) The state calls upon Congress to establish an intergovernmental standing

**S.B. 83****Enrolled Copy**

870 commission among federal, state, and local governments to guide and control planning  
871 decisions and management actions in the Uintah Basin Energy Zone in order to achieve and  
872 maintain the goals, purposes, and policies described in this section.

873 (7) Notwithstanding the provisions of this section, the state's grazing and livestock  
874 policies and plans on land within the Uintah Basin Energy Zone shall continue to be governed  
875 by Sections 63J-4-401 and 63J-8-104.

876 Section 5. **Effective date.**

877 If approved by two-thirds of all the members elected to each house, this bill takes effect  
878 upon approval by the governor, or the day following the constitutional time limit of Utah  
879 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
880 the date of veto override.



**Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments  
for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of  
Land Management in Colorado, Utah, and Wyoming  
Volume 1: Chapters 1, 2, & 3  
Comment Form  
May 4, 2012**

Note Figure, Table, and map reference in comment column.

Page	Line	Commenter	Comment	Response
ES-1 (p. 39)	34	Jon Stearmer, Uintah County	The purpose is clear - friendly lawsuit settlement agreement with an environmental coalition. A need has not been shown as no new information is being analyzed. A careful analysis of the previous PEIS and this current draft shows very little change. The Preferred Alternative has little to no analysis at all.	
ES-5 (p. 43)	15	Jon Stearmer, Uintah County	This is not an experimental stage. It is beyond dispute that numerous companies have profitably extracted oil from shale for many years.	
ES-5 (p. 43)	28	Jon Stearmer, Uintah County	If this is indeed a "fresh look", as stated in the purpose and need, then the "fresh look" needs to consider an alternative providing more liberal acreage allocation. By designating the publicly vetted 2008 RMP as a ceiling the results of this PEIS are unjustifiably skewed.	
ES-5 (p. 43)	33	Jon Stearmer, Uintah County	This is the only viable alternative based on comments in Uintah County's Resolution, attached hereto and incorporated by reference. All neighboring counties in Utah, Colorado and Wyoming have voiced these comments. To the extent Uintah County could gather copies of their passed resolutions they are attached hereto and incorporated by reference.	
ES-6 (p.44)	16	Jon Stearmer, Uintah County	The use of the word "may" is synonymous with speculation and conjectures. No new scientific analysis is provided and this merely a statement filled with political sway.	

**Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments  
for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of  
Land Management in Colorado, Utah, and Wyoming**

**Volume 1: Chapters 1, 2, & 3**

**Comment Form**

**May 4, 2012**

			Administration to thump its chest concerning its "green" environmental policies.	
1-14 (p. 62)	24	Jon Stearmer, Uintah County	And this is supported by what data? Refer back to comment on Enefit and Petrobras.	
1-15 (p. 63)	41	Jon Stearmer, Uintah County	These roles have not been followed based on comment made in Uintah County's comment letter. BLM has failed to comply with its own cooperator MOU.	
1-21 (p. 69)	39	Jon Stearmer, Uintah County	It is not "where possible", but to the "maximum extent" consistent with federal law and the purposes of FLPMA. BLM has been provided with a copy of Uintah County's Energy Zone and Oil Shale plans. BLM must be consistent with said plans to the maximum extent possible.	



DOI-BLM  
CO STATE OFFICE  
COSO MAILROOM

Memorandum of Understanding  
Between  
The Department of the Interior, Bureau of Land Management,  
And  
Uintah County, Utah  
As a Cooperating Agency

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UINTAH COUNTY  
COMMISSION**I. Introduction**

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management ("BLM") and Uintah County, Utah ("Cooperator") for the purpose of preparing the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement (RMPA/PEIS). The BLM is the lead federal agency for development of the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming RMPA/PEIS. The BLM acknowledges that the Cooperator has special expertise applicable to the RMPA/PEIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by Uintah County, Utah as a Cooperating Agency and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5).

**II. Purpose**

The purposes of this MOU are:

- A. To designate Uintah County, Utah as a Cooperating Agency in the RMPA/PEIS process.
- B. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the RMPA/PEIS in a timely, efficient, and thorough manner.
- C. To recognize that the BLM is the lead agency with responsibility for the completion of the RMPA/PEIS and the Record of Decision (ROD).
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

**III. Authorities for the MOU**

- A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
  - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
  - 2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).



**B. Regulations implementing the above authorities:**

1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)

**C. The authorities of Uintah County, Utah to enter into this MOU include, but are not limited to:**

1. Uintah County is a Political Subdivision of the State of Utah.
2. Uintah County has expertise in a full array of public land issues and a professional staff to provide technical information.

**IV. Roles and Responsibilities****A. BLM Responsibilities:**

1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft RMPA/Draft PEIS, the Proposed RMPA/Final PEIS, and the ROD. The BLM's responsibilities include determining the purpose of and need for the RMPA/PEIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
2. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the RMPA/PEIS planning process, giving particular consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law or special expertise.
3. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperator with copies of documents underlying the RMPA/PEIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final RMPA/PEISs.

**B. Cooperating Agency Responsibilities:**

1. Uintah County, Utah is a Cooperating Agency in this planning process and is recognized to have special expertise, including, but not limited in the following areas:
  - a. Uintah County is recognized to have special expertise concerning the history, institutions, social, and economic conditions of its jurisdiction.
  - b. Uintah County's participation will be as a full cooperating agency.
2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the RMPA/PEIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:
  - a. Air quality data, County visitor expenditures, transportation studies, land use, travel planning, water issues, and socio-economic studies, etc.



b. Other such information that is relevant to planning issues or data needs.

3. Within the areas of their jurisdiction or special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues, providing input to the draft Analysis of the Management Situation, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the RMPA/PEIS and supporting documents. (See also Section C.4.)

4. Uintah County will not be seeking any compensation for its contribution as a cooperator.

**C. Responsibilities of the Parties:**

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.

2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMPA/PEIS milestones and timeframes for Cooperator's reviews and submissions.

3. Each Party agrees to fund its own expenses associated with the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and RMPA/PEIS process, except that the BLM may contract with a Cooperator for technical studies within its jurisdiction or special expertise, as provided for in Section IV.B.4.

4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

**V. Other Provisions**

**A. Authorities not altered.** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

**B. Financial obligations.** Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.

**C. Immunity and defenses retained.** Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

**D. Conflict of interest.** The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the Oil Shale and Tar Sands RMPA to Address Land Use Allocations in Colorado, Utah, and Wyoming RMPA/PEIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution.



**E. Documenting disagreement or inconsistency.** Where the BLM and one or more Cooperators disagree on substantive elements of the RMP/EIS (such as designation of the Alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft RMPA/Draft PEIS and the Proposed RMPA/Final PEIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies.

**F. Management of information.**

The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The BLM acknowledges that the Cooperator's handling of these materials may be impacted by state statute or local ordinance. The Parties agree that the BLM, at its discretion, may withhold from the public those documents that would otherwise be available for public release.

**G. Conflict Resolution**

The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that BLM retains final responsibility for the decisions identified in the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and RMPA/PEIS and ROD.

1. **Facilitation.** If the Parties deem necessary, they agree to retain an independent facilitator to foster clear and efficient communication.
2. **Joint fact-finding.** Where the Parties disagree on matters of scientific information, data collection, or analysis, procedures will be employed to prepare a neutral assessment of the contested scientific issues.
3. **Other dispute resolutions.** Appropriate procedures to be taken as necessary.

**H. Coordination with BLM contractors.** Argonne National Laboratory serves as the BLM's contractor for public involvement, data collection, environmental analysis, and RMPA/PEIS preparation. Cooperators may communicate with the contractor only through BLM's representative. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to the contract with Argonne National Laboratory, and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of this contract.

**VI. Agency Representatives**

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the Cooperator[s] and the BLM during the planning process. Each Party may change its representative at will by providing written notice to the other Party.



**VII. Administration of the MOU**

**A. Approval.** This MOU becomes effective upon signature by the authorized officials of all the parties.

**B. Amendment.** This MOU may be amended through written agreement of all signatories.

**C. Termination.** If not terminated earlier, this MOU will end when the ROD for the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement RMPA/PEIS is approved by the BLM. Any Party may end its participation in this MOU by providing written notice to the other Party.

**VIII. Signatures**

The Parties hereto have executed this MOU on the dates shown below.

Uintah County Commission  
152 East 100 North  
Vernal, Utah, 84078

Darlene R. Burns  
Darlene Burns, Chairwoman, Uintah County Commission

Date Oct. 26, 2011

Bureau of Land Management  
Washington Office-WO320  
20 M Street, SE  
Washington D.C. 20003

Michael D. Nedd  
Michael D. Nedd, Assistant Director, Minerals and Realty Management

Date 11-7-11

**Attachment A****Cooperating Agency Participation in the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement RMPA/PEIS**

	<b>RMPA/PEIS Stage</b>	<b>Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise</b>
1	Conduct scoping and identify issues	Identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
3	Analyze management situation	Provide input on the Draft Analysis of the Management Situation (AMS) and aid in interpreting the AMS to constituents.
4	Formulate alternatives	Suggest land allocations or management actions to resolve issues. <b>[Decision to select alternatives for analysis is reserved to the BLM.]</b>
5	Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.
6	Select the preferred alternative; issue Draft RMPA/PEIS	Collaborate with project manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMPA-DPEIS. The CAs may provide written, public comments on draft if desired. <b>[Decision to select a preferred alternative and to issue a draft is reserved to the BLM.]</b>
7	Respond to comments	As appropriate, review comments within the CA's expertise and provide assistance in preparing BLM's responses.
7a	Issue Proposed RMPA/FPEIS	<b>[Action reserved to BLM.]</b>
7b	Initiate Governor's Consistency Review	Once initiated by the BLM, State CAs should contribute to the Governor's Consistency Review.
8	Sign Record of Decision (ROD) [or]	<b>[Action reserved to the BLM.]</b>
8a	Resolve protests; modify Proposed RMP/FEIS if needed; sign ROD	<b>[Action reserved to the BLM.]</b> A CA that has provided information relevant to a protest may be asked for clarification.



**Attachment B**  
**Schedule**

	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise	Input Needed By
1	Identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups.	May 9, 2011
2	Identify data needs; provide data and technical analyses within the CA's expertise.	May 15, 2011
4	Suggest land allocations or management actions to resolve issues. Decision to select alternatives for analysis is reserved to the BLM.	May 9, 2011
5	Collaborate with project manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMP-DEIS. The CAs may provide written, public comments on draft if desired. Decision to select a preferred alternative is reserved to the BLM.	July 22, 2011 Preferred alternative selection: October 7-November 1, 2011; Preliminary Draft review: October 7-November 1, 2011; Public comment period: December 30, 2011-March 31, 2012
6	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.	July 22-August 22, 2011
7	Review comments within the CA's expertise and assist in preparing responses, as appropriate.	April 1-May 1, 2012
7a	Issue Proposed PEIS/PA. Action reserved to the BLM.	October 26, 2012
7b	Initiate Governors' Consistency Reviews. Action reserved to the BLM, in coordination with State cooperators. Expedited review requested.	October 26-December 26, 2012
8	Resolve Protests. Action reserved to the BLM. A CA that has provided information relevant to a protest may be asked for clarification.	November 26-December 26, 2012
8a	Sign Record of Decision. Action reserved to the BLM.	December 31, 2012

**Attachment C**  
**Agency Representatives**

**Bureau of Land Management**

**Plan:** The Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement (RMPA/PEIS)

**Primary Representative:** Sherri Thompson  
Project Manager  
303.239.3758

**Backup Representative:** Mitchell Leverette  
Division Chief, Solid Minerals  
202.912.7113

**Uintah County, Utah**

**Primary Representative:** Michael J. McKee  
Uintah County Commissioner  
435.781.5382

**Backup Representative:** Mark D. Raymond  
Uintah County Commissioner  
435.781.5381



**MOFFAT COUNTY COMMISSION  
RESOLUTION NO. #2012-51**

**A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS  
DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT,  
BLM PROJECT #WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTs DPEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING**

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Moffat County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs DPEIS.

**BACKGROUND**

As background to this Resolution, Moffat County recites the following grievances:

**WHEREAS**, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the 2012 OSTs DPEIS; and

**WHEREAS**, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

**WHEREAS**, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

**WHEREAS**, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

**WHEREAS**, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2012 OSTs DPEIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

**WHEREAS**, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and



**WHEREAS**, the 2012 OSTs DPEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

**WHEREAS**, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

**WHEREAS**, the 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

**WHEREAS**, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

**WHEREAS**, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 4 trillion barrels of oil; and

**WHEREAS**, the preferred alternative in the 2012 OSTs DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

**WHEREAS**, the 2012 OSTs DPEIS fails to analyze alternative 2b, and the BLM admits as much on pages 2-35 of the 2012 OSTs DPEIS; and

**WHEREAS**, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

**WHEREAS**, such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

**WHEREAS**, the preferred alternative in the 2012 OSTs DPEIS entirely ignores the input of the task force, and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the 2012 OSTs DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

**WHEREAS**, the 2012 OSTs DPEIS restricts the acreage allotted in the 2008 PWID for research and development leasing;

**WHEREAS**, the 2012 OSTs DPEIS threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and



**WHEREAS**, the 2012 OSTs DPEIS is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

**WHEREAS**, the BLM has settled on a preferred alternative in the 2012 OSTs DPEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

**WHEREAS**, the acreage approved for Oil Shale and Tar Sands development in the 2012 OSTs DPEIS preferred alternative bears no rational relationship to the stated purpose and need;

**WHEREAS**, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pre-wilderness groups steering BLM's every move;

**WHEREAS**, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the 2012 OSTs DPEIS; and

**WHEREAS**, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy and Management Act (FLPMA) ; and

**WHEREAS**, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

**WHEREAS**, even prior to 2008, technology to extract oil from the oil shale rock is not only economically feasible, but certain oil shale recovery processes require little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

**WHEREAS**, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

**WHEREAS**, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy; and

**WHEREAS**, the 2012 OSTs DPEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

**WHEREAS**, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public 2012 OSTs DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the 2012 OSTs DPEIS in light of the regulation; and

**WHEREAS**, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs DPEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the 2012 OSTs DPEIS become the preferred alternative.



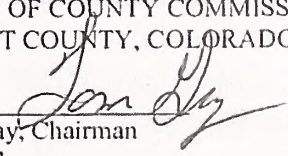
## RESOLUTION

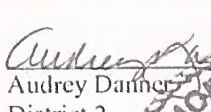
NOW THEREFORE, BE IT RESOLVED BY MOFFAT COUNTY, STATE OF COLORADO AS FOLLOWS:

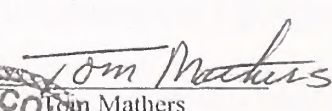
1. Moffat County declares the BLM's continuing to administer and carry out the 2012 OSTs DPEIS, and updating any inventory of lands having wilderness characteristics, to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Moffat County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Moffat County calls upon the BLM to immediately cease all activities related to the 2012 OSTs DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;
4. Should BLM continue to go forward with the 2012 OSTs DPEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the NO-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. Should BLM decide to proceed with the 2012 OSTs DPEIS, it is still obligated under FLPMA to be consistent with State and Local plans to the maximum extent possible;
6. The BLM should extend the May 4, 2012 deadline for public comment on the 2012 OSTs DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.
7. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of the BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTs DPEIS.

APPROVED AND ADOPTED by the Board of County Commissioners of Moffat County Commissioners of Moffat County this 23<sup>rd</sup> day of April, 2012.

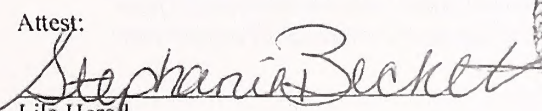
BOARD OF COUNTY COMMISSIONERS  
MOFFAT COUNTY, COLORADO

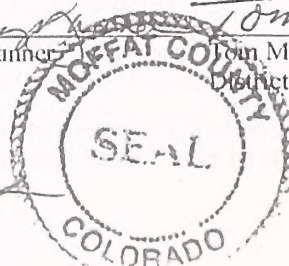
  
Tom Gray, Chairman  
District 1

  
Audrey Danner  
District 2

  
Tom Mathers  
District 3

Attest:

  
Stephanie Becket  
Lila Herod,  
Moffat County Clerk and Recorder





## **RESOLUTION NO. 2012-02**

### **RESOLUTION OF CARBON COUNTY STATE OF UTAH**

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL  
(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open meeting by the Board of Commissioners of Carbon County, Utah in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

### **BACKGROUND**

As background to this Resolution, Carbon County, Utah recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic

EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and  
WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;



WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc..) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

## RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY CARBON COUNTY, STATE OF UTAH AS FOLLOWS:

1. Carbon County, Utah declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Carbon County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Carbon County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the



Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress:

4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.
6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

Passed this 4<sup>th</sup> day of April, 2012

**BOARD OF CARBON COUNTY COMMISSIONERS**

  
Michael S. Milovich, Chairman

Commissioner Milovich voted  
Commissioner Jones voted  
Commissioner Potter voted

Absent  
Yes  
Yes

**ATTEST:**

  
Robert P. Pero, County Clerk/Auditor





Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000

acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion<sup>1</sup> barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

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<sup>1</sup> On information and belief, Garfield County believes 4 trillion barrels to be a more accurate estimate.



WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move; and

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible<sup>2</sup>; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources<sup>3</sup>; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces; and

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

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<sup>2</sup> Garfield County states this recital as: "WHEREAS the development and production of oil from oil shale in some processes has been proven to be technologically feasible; and"

<sup>3</sup> Garfield County states this recital as: "WHEREAS, this same technology to extract oil from the oil shale rock requires little to no consumption of water; and"

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Garfield County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.
2. Garfield County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open Contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.
3. Garfield County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress.
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS.
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.



6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
GARFIELD COUNTY, STATE OF COLORADO

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Chairperson

Upon motion duly made and seconded the foregoing Resolution was adopted by the following vote:

<u>Tom Jankovsky</u>	Aye
<u>Mike Samson</u>	Aye
<u>John Martin</u>	Aye
Commissioners	

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF GARFIELD )

I, Jean Alberico, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Resolution is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Garfield County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Glenwood Springs, this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_.

County Clerk and ex-officio Clerk of  
the Board of County Commissioners

\_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS

SWEETWATER  
C.O.U.N.T.Y

WALLY J. JOHNSON, CHAIRMAN  
JOHN K. KOLB, COMMISSIONER  
GARY BAILIFF, COMMISSIONER  
REID O. WEST, COMMISSIONER  
DON VAN MATRE, COMMISSIONER

80 WEST FLAMING GORGE WAY, SUITE 109  
GREEN RIVER, WY 82935  
PHONE: (307) 872-3890  
FAX: (307) 872-3992

Thursday, April 19, 2012

Ms. Sherri Thompson - Project Manager  
Oil Shale/Tar Sands Draft PEIS  
BLM Colorado State Office  
2830 Youngfield Street  
Lakewood, Colorado 80215

RE: Sweetwater County Resolution 12-04-CC-02 - Opposing the Bureau of Land Management's (BLM) 2012 Oil Shale and Tars Sands Programmatic Environmental Impact Statement, Project #WO-300-1310-PP-OSHL (OSTS PEIS).

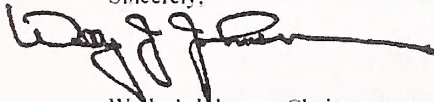
Dear Ms. Thompson:

Sweetwater County hereby formally submits to the Bureau of Land Management Sweetwater County Resolution 12-04-CC-02. By this Resolution, Sweetwater County joins other counties in Wyoming, Utah and Colorado in opposing the BLM's OSTs PEIS for lands administered by the BLM in Colorado, Utah and Wyoming.

Sweetwater County opposes the OSTs PEIS for the purposes of preserving the mineral based economy of the economy of the tri-state region, and for ensuring that the BLM's OSTs PEIS National Environmental Policy Act (NEPA) review process is fair, allows enough for review and is in compliance with all applicable laws.

If you have any questions concerning Sweetwater County's attached Resolution, please contact me at 307-872-3897.

Sincerely,



Wally J. Johnson, Chairman  
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 12-04-CC-02

cc Governor Matt Mead  
Jeremiah Rieman, Governor's Natural Resource Policy Advisor  
Wyoming's Congressional Delegation  
John Ruhs, BLM High Desert District Manager  
Lance Porter, BLM Rock Springs Field Office Manager  
Sweetwater County Board of County Commissioners  
Temple Stoellinger, WCCA Natural Resource Attorney  
Kent Connelly, President - Coalition of Local Governments  
Mary Thoman, President - Sweetwater County Conservation District  
Eric Bingham, Sweetwater County Land Use Director





RESOLUTION 12-04-CC-02  
SWEETWATER COUNTY, STATE OF WYOMING

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-  
PP-OSHL

(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND  
WYOMING,

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Sweetwater County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

BACKGROUND

As background to this Resolution, Sweetwater County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and  
WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and



WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

## RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY SWEETWATER COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Sweetwater County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Sweetwater County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first

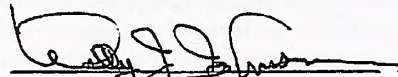


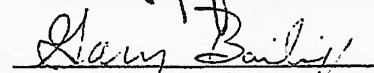
imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

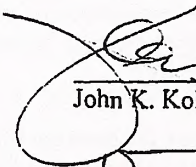
3. Sweetwater County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.
6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

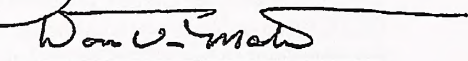
Adopted at the regularly scheduled meeting of the Sweetwater County Board of County Commissioners, held on the 17<sup>th</sup> day of April 2012.

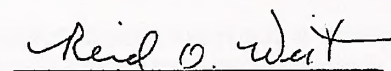
BOARD OF COUNTY COMMISSIONERS

  
Wally J. Johnson, Chairman

  
Gary Bailiff, Commissioner

  
John K. Kolb, Commissioner

  
Don Van Matre, Commissioner

  
Reid West, Commissioner

ATTESTED TO:



Steven Dale Davis

Steven Dale Davis, County Clerk  
Sweetwater County, Wyoming



MCM 2012-034

## **RESOLUTION OF MESA COUNTY STATE OF COLORADO**

**OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL  
(HEREAFTER 2011 OSTs PEIS)  
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH, AND WYOMING,**

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Mesa County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTs PEIS.

### **BACKGROUND**

As background to this Resolution, Mesa County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic

EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS the 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado, and southwestern Wyoming may reach 4 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory and Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and



WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTs PEIS preferred alternative bears no rational relationship to the stated purpose and need; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move; and

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces; and

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative.

## RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY MESA COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Mesa County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Mesa County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;



3. Mesa County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;
4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012;
6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

DULY MOVED, SECONDED AND PASSED THIS 16<sup>th</sup> day of April, 2012

BOARD OF COUNTY COMMISSIONERS OF  
MESA COUNTY, COLORADO

By: \_\_\_\_\_  
Chairman

ATTEST:



*Sheila Reiner*  
Sheila Reiner  
Mesa County Clerk & Recorder

S:\DRFT-AGN\RESO\Tristate Oil Shale Resolution 2012.docx

*for Robert Foley*  
*Deputy*

**RESOLUTION NO. 2012- \_\_\_\_**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF RIO BLANCO  
COUNTY, COLORADO, OPPOSING THE UNITED STATE BUREAU OF LAND  
MANAGEMENT'S (BLM) 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC  
ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL  
(HEREAFTER 2012 OSTs PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO,  
UTAH AND WYOMING**

**Concerning Secretary of the Interior Secretarial Order 3310 issued December 22, 2010  
("Secretarial Order 3310").**

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTs PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the 2012 OSTs PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

"Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (Le., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply)"; and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2012 OSTs PEIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:



“For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010”; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTs PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

**Concerning the 2008 OSTs PEIS**

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTs PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 Federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTs PEIS was three years in the making, and honored the input of a task force of Governors and other stakeholders as required by the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for leasing and development of tar sands. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program which the 2008 OSTs PEIS and related regulations delivered, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming are estimated to be the equivalent of 8 trillion barrels of oil; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the County Master Plan and policies which call for responsible development of available energy resources; and

WHEREAS, the alternative adopted in the Record of Decision (ROD) of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs PEIS; and

**Concerning the 2012 OSTs PEIS**

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS, such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS, the draft 2012 OSTs PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS, the draft 2012 OSTs PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the 2012 OSTs PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTs PEIS admittedly without having first analyzed its impacts; the BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the preferred alternative of the draft 2012 OSTs PEIS bears no rational relationship to the stated purpose and need; and



**Concerning Oil Shale Facts**

WHEREAS, the development and production of oil from oil shale has been demonstrated to be technologically and economically feasible elsewhere in the world; and

WHEREAS, some technologies to extract oil from the oil shale rock are not only economically feasible, *but require little or no consumption of water*; and

WHEREAS, the energy captured in the extraction of oil and other hydrocarbons from shale more than makes up for energy consumed in that extraction process; and

**Other Concerns**

WHEREAS, the rising price of gasoline, coupled with ever-increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, results in increasing hardships for families and the local economy; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to a BLM encumbered by a host of anti-oil shale pro-wilderness groups steering the BLM's oil shale policy; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012, and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTs PEIS become the preferred alternative;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
RIO BLANCO COUNTY, COLORADO, THAT:**

1. Rio Blanco County declares the BLM's continuing to administer and carry out the 2012 OSTs PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present one in effect.
2. Rio Blanco County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs PEIS, because doing so is an open contempt and

violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, for which the Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.

3. Rio Blanco County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress.

4. Should BLM continue to go forward with the 2012 OSTs PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS.

5. The BLM should extend the May 4, 2012, deadline for public comment on the draft 2012 OSTs PEIS by at least 30 days after publication of the expected oil shale regulation which is due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTs PEIS.

**DULY MOVED, SECONDED, AND PASSED ON A VOTE OF \_\_\_\_\_ FOR AND  
\_\_\_\_\_ AGAINST THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.**

**BOARD OF COUNTY COMMISSIONERS OF  
RIO BLANCO COUNTY, COLORADO**

\_\_\_\_\_  
Shawn J. Bolton, Chairman

\_\_\_\_\_  
Kenneth C. Parsons, Commissioner

\_\_\_\_\_  
Kai M. Turner, Commissioner

ATTEST:

\_\_\_\_\_  
Nancy R. Amick, Clerk to the Board



**RESOLUTION #12-08**  
**DUCHESNE COUNTY, STATE OF UTAH**

A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTs DPEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open public meeting after due opportunity for public comment, by the Board of Commissioners of Duchesne County, Utah in order to redress the many violations of law, regulation and policy by the BLM with respect to the BLM's 2012 OSTs DPEIS.

As background to this Resolution, Duchesne County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a Notice of Intent to prepare the above-referenced 2012 OSTs DPEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language above documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and



Resolution #12-08  
Duchesne County, Utah  
April 16, 2012  
Page 2 of 4

WHEREAS THE 2008 OSTs PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per the requirements of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTs PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTs PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated by the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program, to which the 2008 OSTs PEIS and related regulations gave birth, was a reasonable response to the fact that the recoverable oil equivalent from oil shale and tar sands resources in Utah, Colorado and Wyoming exceeds 4 trillion barrels per the latest USGS scientific estimate; and

WHEREAS, the preferred alternative in the draft 2012 OSTs DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, the OSTs DPEIS fails to analyze BLM's preferred Alternative 2b, and the BLM admits as much on page 2-35 of the DPEIS; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTs PEIS entirely ignores the input of the task force, the cooperating agencies, and the other stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTs DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities and local government coalitions which require the BLM to (1) publish the written input of cooperators who have unresolved disagreements over the substantive elements of the EIS document, and (2) describe the objectives of the cooperators' land use plans and policies; and

WHEREAS the 2012 OSTs DPEIS preferred alternative greatly restricts the already meager acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the 2012 OSTs DPEIS preferred alternative threatens to arbitrarily undermine all that was rationally and scientifically supported in the 2008 OSTs PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTs DPEIS preferred alternative is the creature of a friendly lawsuit



Resolution #12-08  
Duchesne County, Utah  
April 16, 2012  
Page 3 of 4

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale, pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTs PEIS is now the No Action Alternative of the draft 2012 OSTs DPEIS; and

WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy Management Act (FLPMA); and

"WHEREAS, the 2008 OSTs PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources, but in stark contrast the 2012 OSTs DPEIS is plainly inconsistent with state and local plans and policies, plainly inconsistent with the Uintah Basin Energy Zone Legislation passed in the 2012 Utah Legislature (Senate Bill 83 – see Utah Code 63J-8-102 & 105.5), and it fails to adequately explain why consistency is not achievable; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible when market rates for oil are at least \$65.00 per barrel, which is well below current market rates; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible at \$65.00 per barrel, but it requires little or no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc..) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of family-wage jobs due to the Obama Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTs DPEIS improperly limits technology testing to strictly in-situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTs DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTs DPEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTs DPEIS; and

Resolution #12-08  
Duchesne County, Utah  
April 16, 2012  
Page 4 of 4

1. Duchesne County declares the BLM's continuing to administer and carry out the 2012 OSTs DPEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
2. Duchesne County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTs DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;
3. Duchesne County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTs DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;
4. Duchesne County finds that the only way the BLM could go forward with the 2012 OSTs DPEIS in light of the Congressional Spending Moratorium, would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTs PEIS;
5. Duchesne County requests that the BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTs DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or about May 15, 2012.
6. Duchesne County requests that the BLM honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTs PEIS.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

**ATTEST:**

**DUCHESNE COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Diane Freston  
County Clerk/Auditor

\_\_\_\_\_  
Kirk J. Wood, Chairman

\_\_\_\_\_  
Ronald Winterton, Member

\_\_\_\_\_  
Kent R. Peatross, Member



Thank you for your comment, Audrey Graham.

The comment tracking number that has been assigned to your comment is OSTs2012D50016.

Comment Date: February 10, 2012 01:06:03AM

OSTs 2012 Draft PEIS

Comment ID: OSTs2012D50016

First Name: Audrey

Middle Initial:

Last Name: Graham

Organization: Grand County Council Member

Address: 1701 Murphy Lane

Address 2:

Address 3:

City: Maob

State: UT

Zip: 84532

Country: USA

Privacy Preference: Don't withhold name or address from public record

Attachment:

Comment Submitted:

Dear BLM, As a local elected official in Grand County Utah, where some of the proposed activities will take place, I request that a public hearing take place in our community in a timely and well-advertised manner. Thank you, Audrey

Thank you for your comment, Audrey Graham.

The comment tracking number that has been assigned to your comment is OSTs2012D50017.

Comment Date: February 14, 2012 14:21:28PM

OSTs 2012 Draft PEIS

Comment ID: OSTs2012D50017

First Name: Audrey

Middle Initial:

Last Name: Graham

Organization:

Address: 1701 Murphy Lane

Address 2:

Address 3:

City: Moab

State: UT

Zip: 85432

Country: USA

Privacy Preference: Don't withhold name or address from public record

Attachment:

Comment Submitted:

A second comment, in examining the maps more closely, I see that apparently the proposed area is not located in Grand County at all, nor in its watershed, except for the Green River. In addition, I can see that many communities which are located nearer than Moab to potential sites are not listed as hearing locations. I therefore respectfully withdraw my request to have a public hearing in Moab. Thank you.



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**M.2 U.S. ENVIRONMENTAL PROTECTION AGENCY COMMENT LETTER AND  
BUREAU OF LAND MANAGEMENT RESPONSE LETTER**





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**MAY 03 2012**

Ref: 8EPR-N  
Michael Nedd, Assistant Director  
Bureau of Land Management  
Minerals, Realty and Resource Protection  
1849 "C" Street NW  
Washington, D.C. 20240

Sherri Thompson, Project Manager  
Bureau of Land Management  
Colorado State Office  
2850 Youngfield Street  
Lakewood, Colorado 80215-7093

Re: EPA Comments on Draft Programmatic Environmental  
Impact Statement and Possible Land Use Plan  
Amendments for Allocation of Oil Shale and Tar Sands  
Resources  
CEQ # 20120019

Dear Mr. Nedd and Ms. Thompson:

In accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and Section 309 of the Clean Air Act (CAA), 42 U.S.C. Section 7609, the U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the Bureau of Land Management's (BLM) Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (Draft PEIS).

**Background and Project Description**

In 2008, the BLM amended twelve land use plans in Colorado, Utah and Wyoming to designate public lands administered by the BLM as available for commercial leasing for oil shale or tar sands development through the preparation of a PEIS (2008 OSTs PEIS). These 2008 amendments made approximately 2 million acres of public land available for application for leasing and development of oil shale, and approximately 431,000 acres of public land available for application for leasing and development of tar sands. In 2009 the 2008 OSTs PEIS was challenged in a lawsuit brought by a coalition of environmental organizations. As part of the resulting settlement agreement filed with the



U.S. District Court in Colorado in February of 2011, BLM decided to take a fresh look at the land allocations analyzed in the 2008 OSTs PEIS and consider excluding certain lands from future leasing of oil shale and tar sands resources.

It is important to note that the Preferred Alternative represents an approximate 77% reduction in land proposed as available for application for oil shale leasing as compared to the 2008 OSTs PEIS decision. Similarly for tar sands leasing, the Preferred Alternative represents an approximate 79% reduction in land proposed as available compared to the 2008 decision. These changes represent significant steps toward protecting environmental resources. The Draft PEIS analyses four alternatives: Alternative 1 (no action), Alternative 2 (conservation focus), Alternative 3 (research lands focus) and Alternative 4 (moderate development). Alternative 2 consists of two options for oil shale. Alternative 2(a) excludes all lands having wilderness characteristics (LWC), the whole of the Adobe Town "Very Rare or Uncommon Area," core or priority sage-grouse habitat and all areas of critical environmental concern (ACEC). Alternative 2(b) lands available for application for leasing and development of oil shale would be the same as Alternative 2(a); however, only for research, development and demonstration (RD&D) leases. A key benefit of Alternative 2(b) would be facilitation of a robust RD&D program for oil shale development. The BLM has identified Alternative 2(b) as the Agency's Preferred Alternative.

#### **The EPA's Comments and Recommendations**

The EPA appreciates having had the opportunity to consult with the BLM on the Draft PEIS and to see that many of our specific comments have been addressed. We remain committed to working with BLM to seek ways to address a few additional comments. The EPA focuses these comments on the need for rigorous NEPA analysis at future leasing and project decisions, particularly analysis regarding water resources and air quality. Along with an explanation of these comments, we offer recommendations on how the BLM might address them.

##### **A. NEPA at Future Leasing and Project Decisions**

The EPA's most essential remaining recommendation is that BLM make a strong and clear commitment in the Final PEIS that the agency will conduct additional NEPA analysis and disclosure prior to leasing any land for oil shale/tar sands development and also after development technologies and their potential impacts are better defined and understood. As the Draft PEIS explains, oil shale development will involve untested technologies where the magnitude and nature of impacts is currently undetermined, but may be significant. Furthermore, key information needed to evaluate and mitigate potential impacts is not yet available, including future project locations, operating characteristics, size and scope of the projects, and likely impacts and mitigation measures.

Given this situation, the EPA is reviewing this document with the assumption that the level of NEPA at future leasing and project decisions will be an EIS, and that BLM will perform rigorous NEPA analyses when technologies are better understood. We believe it is important for the Final PEIS to include a commitment to preparing EISs for future leasing and project decisions, and to confirm that BLM will fully disclose direct, indirect and cumulative impacts of future leasing and development decisions and apply mitigation necessary to reduce those impacts.

The Draft PEIS notes that the concept for the Preferred Alternative emerged during development of this document, is presented only in brief, and will be developed further in preparation of the Final PEIS



(page 2-35). The EPA believes the Preferred Alternative gives BLM an opportunity to acquire important data during RD&D leasing and prior to commercial leasing that will be useful to inform future NEPA analyses. The EPA recommends the Final PEIS discuss how the BLM intends to use the RD&D leasing process to assess potential impacts on water resources and air quality, thereby positioning BLM to mitigate these potential impacts in the event commercial leasing becomes viable. In addition, we recommend the Final PEIS identify the types of data sets that BLM may require be provided by RD&D lessees.

With respect to future leasing decisions, it would be useful to include information in the Final PEIS regarding criteria the BLM may be considering for converting research leases to commercial scale leases. This disclosure would be putting both industry and the public on notice regarding the decision-making process that BLM intends to undertake upon receipt of commercial lease applications.

## B. Water Resources

### 1. Surface Water

The EPA recommends that the Final PEIS include the most up-to-date information on the existing quality of surface waters in these areas is included in the document, which can be obtained from each State (see below). This is particularly important since water bodies in portions of the study area are already impacted where significant oil and gas development is occurring. The number of impaired streams listed on the current 303(d) lists of impaired waters within both the Piceance Basin in Colorado and the Uinta Basin in Utah have increased since the previous listings, as outlined below.

Under the Clean Water Act (CWA), states are required to establish and maintain water quality standards to protect water bodies such as rivers, lakes and streams. Water bodies that do not meet these standards are placed on the State's Section 303(d) List of impaired waters. The Draft PEIS provides 2006 data for the 303(d) Lists from Colorado, Utah and Wyoming. Updated information is now available to replace 2006 impaired water body data in Table 3.4.1-1 (pages 3-64 and 3-65) within the study areas of Colorado, Utah and Wyoming. 2010 data is available for Utah, while 2012 data is in the process of being finalized for Colorado and Wyoming. The EPA recommends that the Final PEIS reflect these updates, as discussed in the following paragraphs.

In Colorado, the draft 2012 303(d) List indicates that water quality has become further impaired in the Piceance Basin since 2006. This draft 2012 303(d) List identifies five additional river segments in the basin. Colorado's Monitoring and Evaluation List (M&E List) identifies water bodies exhibiting some stress in the aquatic ecosystem, but where more data is needed to make an appropriate determination. The M&E List identifies one additional river segment within the Piceance-Yellow Creek watershed between the 2010 and 2012 lists. Based on the potential oil shale development in this area in addition to ongoing and planned oil and gas development, there is a trend toward further impairment and the potential for additional violations of surface water quality standards and the CWA if additional pollutant loads reach these impacted river segments. Colorado finalized their 2012 303(d) and M&E lists and submitted the 303(d) list to EPA on March 23, 2012 for approval. These lists can be found online at [http://www.cdphe.state.co.us/op/wqcc/Reports/303\(d\)/93\\_2012\(03\).pdf](http://www.cdphe.state.co.us/op/wqcc/Reports/303(d)/93_2012(03).pdf). The following table identifies 5 additional water segment impairments in the Piceance Basin.



Colorado ID	Water Segment	Impairment
COLCWH13c	Yellow Creek	Fe (Trec) and Aquatic Life
COLCWH14a	Piceance Creek	Fe (Trec)
COLCWH15	Piceance Creek	Aquatic Life (provisional)
COLCWH20	Black Sulfur Creek	Aquatic Life (provisional)
COLCWH23	W. Douglas Creek	Aquatic Life

Source: CDPHE, 2012

In Utah, the 2010 303(d) List indicates that water quality has also become further impaired in the Uinta Basin since 2006. Based on the ongoing and planned oil and gas development in this area in addition to potential oil shale and tar sands development, there appears to be a high likelihood of further impairment and the potential for additional violations of surface water quality standards and the Clean Water Act if additional pollutant loads reach these impacted river segments. The 2010 303(d) list can be found at <http://www.epa.gov/waters/ir/index.html>.

Utah ID	Water Segment	Impairment
UT14050007-003	Evacuation Creek	TDS
UT14030001-001	Cottonwood Wash	Benthic Macro-invertebrate Assessment (BMAI)
UT14060006-001	Willow Creek	BMAI
UT14060004-002	Indian Canyon Creek	Arsenic and boron (in addition to TDS)
UT14060005-003	Ninemile Creek	Temperature

Source: UDEQ, 2010

In Wyoming, the draft 2012 303(d) List indicates that water quality impairments have not changed within the project's study area portion of the Green River Basin since 2006. Wyoming finalized their draft 2012 303(d) list on March 27, 2012. This list can be found at [http://deq.state.wy.us/wqd/watershed/Downloads/305b/2012/WY2012IR\\_Draft\\_Doc11-1058.pdf](http://deq.state.wy.us/wqd/watershed/Downloads/305b/2012/WY2012IR_Draft_Doc11-1058.pdf).

The EPA recommends that BLM include all updated 303(d) list information for each state in the Final PEIS. EPA also recommends that the Final PEIS provide a discussion of the changes between 2006 and 2012 to clearly disclose any increases in impaired water bodies for each state's study area. Inclusion of this data represents a key piece of information needed to fully disclose current water quality conditions and to evaluate, and if necessary mitigate, impacts of any future oil shale and tar sands development.

## 2. Groundwater

In order to provide a baseline to accurately assess the potential impacts of the alternatives, we recommend that the Final PEIS add additional information to more thoroughly characterize groundwater resources in Utah and Wyoming. Specifically, we recommend the Final PEIS include the delineated depth of underground source of drinking water (USDWs) in the study areas as well as the quality of each zone within these aquifers, to the extent there is existing information to do so. Without this information, the Draft PEIS provides little information regarding the location or depth



of USDWs. All groundwater that has not been exempted through the aquifer exemption process and meets the definition of USDW at 40 C.F.R. § 144.3 is protected under the Safe Drinking Water Act. A USDW is defined as an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of ground water to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids (TDS) and is not an exempted aquifer. Aquifers are presumed to be USDWs unless they have been specifically exempted or if they have been shown to fall outside the definition of a USDW (e.g., over 10,000 mg/L TDS). We provide the following sources for assistance to better characterize groundwater resources in the Final PEIS within Utah and Wyoming:

- In Utah, the Utah Geologic Survey has collected detailed groundwater information for its Uinta Basin Water Study. The purpose of this study is to better understand and characterize groundwater resources in the Uinta Basin in recognition of the fact that areas of potential oil shale development overlap with natural gas fields in the basin. The study can be found at [http://geology.utah.gov/emp/UBwater\\_study/](http://geology.utah.gov/emp/UBwater_study/).

In addition, the Greater Natural Buttes Draft Resource Management Plan (RMP) provides extensive characterization of the three major aquifer systems in the Uinta Basin. This information is provided in Section 3.13.3 of the Draft RMP, and can be found at [http://www.blm.gov/ut/st/en/fo/vernal/planning/nepa\\_/greater\\_natural\\_butttes.html](http://www.blm.gov/ut/st/en/fo/vernal/planning/nepa_/greater_natural_butttes.html).

- In Wyoming, the Water Development Office recently completed the 2010 Green River Basin Plan Update, which presents a basinwide perspective on water resources and includes identification of the major aquifers in the basin and the physical and chemical characteristics of their groundwater. The plan can be found at <http://waterplan.state.wy.us/plan/green/green-plan.html>.

### *3. Issues Pertaining to Both Groundwater and Surface Water*

#### Baseline Characterization of Drinking Water Sources

In order to accurately assess the potential impacts of the alternatives on drinking water sources, we recommend that all sources of drinking water in the study area be characterized in the Final PEIS. These sources include water in streams, rivers, lakes, springs and aquifers that is used as a supply of drinking water. This can be accomplished by including a discussion in the Final PEIS of each State's source water protection program, and including state-designated surface and groundwater protection zones. The EPA recommends this step so that the reader can fully understand the extent and location of these important resources. We recommend including a map illustrating locations of source water protection zones (both groundwater and surface water) for municipal supply. In addition, we provide the following contacts for assistance obtaining this information for each state:

- John Duggan at the Colorado Department of Public Health and Environment, Water Quality Control Division at (303) 692-3534
- Kate Johnson at the Utah Division of Environmental Quality, Division of Drinking Water at (801) 536-4206
- Kim Medina at the Wyoming Department of Environmental Quality, Water Quality Division



at (307) 473-3476, and Mark Pepper at the Wyoming Association of Rural Water Systems at (307) 436-8636

#### 4. Wetlands

The Draft PEIS indicates that BLM will ensure that impacts to jurisdictional wetlands (those under the regulatory jurisdiction of the Clean Water Act (CWA), Section 404, and the USACE) would be avoided or mitigated. The EPA would like to clarify that the CWA §404(b)(1) guidelines require applicants to avoid, minimize and mitigate for impacts to all waters of the United States. We also note that according to Executive Order (EO) 11990, federal agencies are required to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities, regardless of the jurisdictional status of the wetlands. To this end, we recommend that the Final PEIS include a commitment from BLM to comply with these requirements for all wetlands, not solely jurisdictional wetlands.

Throughout the Draft PEIS the BLM requires future projects to mitigate for impacts to wetlands and riparian areas. CWA §404(b)(1) requires permit applicants to first avoid impacts to waters of the U.S., then minimize the unavoidable impacts, prior to mitigating the remaining unavoidable impacts. We recommend that the Final PEIS reflect these CWA 404(b)(1) requirements wherever there are anticipated impacts to waters of the U.S. This will ensure that potential applicants are on notice of the full extent of requirements for the protection of waters of the U.S.

### C. Air Quality

#### 1. Need for Additional Disclosure of New Clean Air Act Designations

The Draft PEIS is lacking recently published important information regarding two CAA designations that will affect future development in the study area. While not a part of the NEPA requirements that must be included in the PEIS, before finalizing an approval of any project, the CAA requires that the BLM conduct a general conformity analysis for any project emissions occurring in such areas designated as nonattainment or maintenance for the National Ambient Air Quality Standards (NAAQS). The CAA states that in such areas, a determination must be made that the emissions (either direct or indirect) from a federal action will not exceed a *de minimis* threshold level measured in tons per year for the criteria pollutant of concern. If the Action exceeds the *de minimis* level, then a conformity determination is required to document how the federal action will affect implementation of the applicable implement plan to reach attainment.

The EPA issued a final rule on April 30, 2012, designating Sublette County and portions of Lincoln and Sweetwater counties in Wyoming as a marginal nonattainment area for ozone. Some of the proposed area available for oil shale leasing under the Preferred Alternative in Wyoming overlaps with this designated ozone nonattainment area in Sublette County and Sweetwater County. The final rule also designated Duchesne and Uintah counties in Utah as an ozone unclassifiable area. Some proposed areas for oil shale and tar sands leasing under the Preferred Alternative in Utah overlap with this designated ozone unclassifiable area in both Duchesne and Uintah counties. Given this situation, during the NEPA process for future leasing and project decisions in these areas, it will be important for BLM to fully analyze and disclose impacts and necessary mitigation, including the possibility of no net increase in emissions depending on the extent of the nonattainment problem.



Therefore, the EPA recommends that future oil shale leasing and plan development in the designated ozone nonattainment area in Wyoming describe whether general conformity analysis is required (i.e., whether the relevant emissions exceed *de minimis* thresholds) and how the future proposed actions would comply with the applicable implementation plan. If a general conformity analysis is necessary, the EPA recommends that it be included in the BLM's NEPA analysis.

## 2. Power implications of in situ technologies for oil shale development

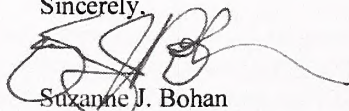
The Draft PEIS assumes future in situ projects would require 600 MW of additional electrical generation capacity when commercial production levels are reached, and that this new electricity capacity would be provided by conventional coal-fired plants. In view of the potential magnitude of this additional energy need and the air quality in the region, it will be essential to fully analyze and be prepared to discuss in future NEPA documents the potential environmental impacts and mitigation measures associated with additional energy sources. We also strongly recommend that BLM commit to analyze a range of power generation options, including natural gas and renewable sources in view of currently development activity and air quality.

### The EPA's Rating

Consistent with Section 309 of the CAA, it is the EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project. In accordance with our policies and procedures for reviews under NEPA and Section 309 of the CAA, the EPA is rating this Draft EIS as "Environment Concerns – Insufficient Information" (EC-2). The "EC" rating indicates that our review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts. The "2" rating indicates that the Draft EIS does not contain sufficient information for the EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment. We have enclosed a description of the EPA's rating system for your convenience (Attachment 1).

We appreciate the opportunity to comment on this document, and hope our suggestions for improving it assist you with preparation of the Final PEIS. We would be happy to meet to discuss these comments and our suggested solutions. If you have any questions or requests, please feel free to contact either me at 303-312-6925 or David Fronczak of my staff at 303-312-6096.

Sincerely,



Suzanne J. Bohan  
Director, NEPA Compliance and Review Program  
Office of Ecosystems Protection and Remediation

Enclosures (1)

**ATTACHMENT 1**  
**U.S. Environmental Protection Agency Rating System for**  
**Draft Environmental Impact Statements**

**Definitions and Follow-Up Action\***

**Environmental Impact of the Action**

**LO -- Lack of Objections:** The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC -- Environmental Concerns:** The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

**EO -- Environmental Objections:** The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU -- Environmentally Unsatisfactory:** The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

**Adequacy of the Impact Statement**

**Category 1 -- Adequate:** EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2 -- Insufficient Information:** The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new, reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

**Category 3 -- Inadequate:** EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.





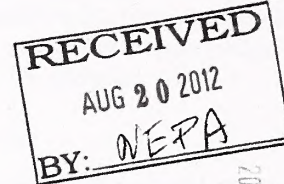
United States Department of the Interior  
BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240  
<http://www.blm.gov>



In Reply Refer To:  
3900 (WO-320)

AUG 24 2012



Ms. Suzanne Bohan, Director  
NEPA Compliance and Review Program  
Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

Dear Ms. Bohan:

Your letter of May 3, 2012, provided comments on the Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement (PEIS). In accordance with Section 309 of the Clean Air Act, the letter provided a rating for the document after an independent review and evaluation of the potential environmental impacts of this project by the Environmental Protection Agency (EPA). The Bureau of Land Management (BLM) appreciates the opportunity to confer with the EPA on the Draft PEIS and the comments and recommendations that were provided in your letter. The BLM is currently considering all the comments that were received during the comment period; in the spirit of cooperation, I wanted to take this time to respond directly to the comments and recommendations in your letter.

A) NEPA at Future Leasing and Project Decisions

The EPA's first and "most essential" recommendation is that the BLM make a strong and clear commitment in the Final PEIS that the agency will conduct additional NEPA analysis and disclosure prior to leasing any lands for oil shale or tar sands development and also after development technologies and their potential impacts are better defined and understood. Specifically, the EPA is recommending that the Final PEIS include a commitment to preparing EIS level analysis for future leasing and project decisions. The EPA also suggests the Final PEIS confirm that the BLM will fully disclose direct, indirect and cumulative impacts of future leasing and development decisions and apply mitigation necessary to reduce those impacts. The EPA is recommending that the Final PEIS discuss how the BLM intends to use the RD&D leasing program to assess potential impacts on water resources and air quality. The EPA is also recommending the Final PEIS identify the types of data sets that BLM may require be provided by RD&D lessees. The EPA also suggested including information in the Final PEIS criteria the BLM may be considering for converting research leases to commercial scale leases.

**Response:** Just as in 2008, the Draft PEIS analyzes an allocation decision, the amendment of 10 existing land use plans to designate certain public lands as open, and certain other lands as closed for application for future oil shale and tar sands leasing. This land use allocation does not authorize any future lease or development proposal. As stated on page 1-1 of the Draft



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PEIS, prior to issuance of any commercial leases on lands that may be designated as available for application, the BLM must comply with all pertinent laws, regulations, and policies required to analyze the direct, indirect, and cumulative impacts of the proposed lease(s) for development of oil shale or tar sands resources, including, but not limited to, NEPA, National Historic Preservation Act of 1966 (NHPA), and Endangered Species Act of 1973 (ESA). NEPA analysis and other appropriate review would be required not only before approval of a lease, but also prior to approval of any subsequent plan of development on a lease, which would include analysis of particular activities at the specific location where development would occur. Appropriate stipulations and mitigation measures would be identified as part of both of these subsequent NEPA analyses. Similar language is found in Chapter 1 (pages 1-1 and 1-6), Chapter 2 (pages 2-20 and 2-58) and Chapter 6 (page 520). This language will remain in the Final PEIS.

In determining what level of environmental analysis will be done at each phase, the BLM will comply with the Council on Environmental Quality's (CEQ's) regulation at 40 CFR 1501.4, whether to prepare an Environmental Impact Statement, as well as all other applicable provisions of 40 CFR 1500-1508. This determination will weigh into account a number of factors which are currently unknown at this time. It would be premature and inappropriate at this point for the BLM to commit to a specific level of NEPA analysis for particular future proposed actions the character of which is unknown at this time. Specifically, the BLM does not have information regarding either the particular technology that may be used or the location in which that technology may be proposed for use. The BLM believes that the CEQ regulations, as well as the Department's own NEPA implementing regulations at 43 CFR Part 46, provide sufficient guidance as to how to conduct NEPA review in such circumstances. The BLM is taking a measured approach to oil shale development where each step builds upon a prior step. This staged approach ensures that any commercial oil shale program meets the intent of Congress, is consistent with the requirements of NEPA and FLPMA, takes advantage of the best available information and practices to minimize impacts and offers opportunities for states, tribes, local communities, and the public to be involved at each decision point. At future stages of environmental evaluation (i.e., leasing and/or plan of development), a landscape-level analysis will be performed, if appropriate. The scope of the analysis in subsequent NEPA documents would be dependent upon the number of applications received and the type and size of operations proposed by the applicant. This could result in a statewide, regional, basin-wide, or site specific analysis.

It would be premature, to include in the Final PEIS specific data set requirements at this time, which must be provided by the RD&D lessees. The BLM anticipates that RD&D lessees wishing to convert their lease to a commercial lease would need to provide the BLM with detailed technology information as well as information about environmental consequences to such resources as wildlife, air quality, water quality and quantity, etc. Until we know more about the proposed technology and the proposed location for application of that technology, it would be difficult to explain, in the Final PEIS, precisely how this data will be used.



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The regulations governing oil shale leasing and development, which may themselves be clarified by amendments that are currently in draft for proposal over the course of this summer, specify the criteria the BLM will be considering for conversion of an RD&D lease to a commercial lease. While a part of the overall oil shale program, the RD&D portion of that program is separate and apart from the land management actions being analyzed in the PEIS.

**B) Water Resources**

1. **Surface Water.** The EPA is recommending the Final PEIS include the most up-to-date information on existing surface water quality. Recent updates to the Clean Water Act Section 303(d) of the Clean Water Act Lists should be incorporated for all three states. EPA also recommends that the Final PEIS include a discussion of the changes between 2006 and 2012 to clearly disclose any increases in impairment for each state's study area.

**Response:** The BLM will incorporate the 2010 Section 303(d) data for Utah and the 2012 data for Colorado and Wyoming into the Final PEIS, as suggested. The Final PEIS will also include a discussion of the changes between 2006 and 2012 to clearly disclose any increases in impairment for each state's study area.

2. **Groundwater.** The EPA is recommending that the Final PEIS include the delineated depth of underground sources of drinking water (USDWs) in the study areas as well as the quality of each zone within these aquifers, to the extent there is existing information to do so.

**Response:** Aquifer systems and water quality in the basins are described generally in Sections 3.4.2.1, 3.4.3.1, and 3.4.4.1, and geologic information is provided in Sections 3.2.1.2, 3.4.3.1, and 3.4.4.1. Thicknesses, water quality, and especially depth of the aquifers vary on a site-specific basis. Because the PEIS provides an overview of the study areas, site-specific information is not included. An actual project would undergo two further levels of NEPA analysis (lease stage and project design phase), during which aquifer depths and other information would be assessed in detail. No change was made to the PEIS in response to this comment. BLM's contractor for this planning initiative, Argonne National Laboratory (ANL), did call the contacts that you provided. The Wyoming contact provided a website. The site lists 377 wellhead protection reports for Wyoming municipal wells, but has no map guide. None are obvious names of the study area. This information was not useful for a regional study. ANL also phoned Colorado and Utah and left messages, but still has not heard anything. ANL also searched their websites, and found that these websites include overview information about source water protection, but do not appear to offer a list of studies or a map of source water protection zone locations. ANL suggests that there would be little or no delineated source water protection zones in the study areas because very few public water systems are located in those places. Sections 3.4.2.1, 3.4.3.1, and 3.4.4.1 have been updated to refer to the source water protection programs in the three states.



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3. Issues Pertaining to Both Groundwater and Surface Water. The EPA is recommending that all sources of drinking water in the study area be characterized in the Final PEIS and include a map illustrating locations of source water protection zones for municipal supply.

**Response:** The PEIS provides an overview of the hydrology of the study areas. Site-specific information is not included in the PEIS. An actual project would undergo two further levels of NEPA analysis (lease stage and project design phase), during which groundwater and surface water protection zones would be assessed in detail. Sections 3.4.2.1, 3.4.3.1, and 3.4.4.1 have been updated to refer to the source water protection programs in the three states. Wellhead protection zones are very localized and unlikely to be present near remote developments. Surface waters also have a site-specific aspect.

4. Wetlands. The EPA provided a clarification of the Clean Water Act guidelines as they apply to jurisdictional wetlands and suggested that the Final PEIS include a commitment from the BLM to comply with both the Clean Water Act and Executive Order for all wetlands, not just jurisdictional wetlands. The EPA also recommends that the Final PEIS reflect the Clean Water Act Section 404(b)(1) requirements for impacts to waters of the U.S.

**Response:** The Final PEIS will be revised to note that the fundamental rationale of the Section 404 of the Clean Water Act program is that no discharge of dredged or fill material into waters of the United States should be permitted if there is a practicable alternative that would be less damaging to our aquatic resources or if significant degradation would occur to the nation's waters. The document will reference the Clean Water Act and the guidelines at Section 404(b)(1) of the Clean Water Act. The document will also include a statement that permit review and issuance follows a sequenced process that encourages avoidance of impacts, followed by minimizing impacts and, finally, requiring mitigation for unavoidable impacts to the aquatic environment.

Language on page 2-4, under the Floodplains and wetlands bullet, has been changed to, "Leasing and development of oil shale and tar sands resources will be subject to statutory requirements and authorities addressing the protection of wetlands or floodplains, such as the Clean Water Act and Executive Order 11990."

#### C) Air Quality

1. Disclosure of New Clean Air Act Designations. The EPA is recommending a qualitative discussion of the new Clean Air Act designations (April 30, 2012) in portions of Wyoming and Utah as marginal nonattainment areas for ozone and ozone unclassified areas respectively. In addition, the EPA would like to see some general discussion in the document related to potential future conformity analysis as it may or may not apply to these new designations.

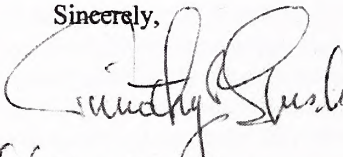


**Response:** The BLM will incorporate this data as suggested.

2. Power implications of in situ technologies in future NEPA documents. The EPA is recommending that the BLM commit in the Final PEIS to analyzing a range of power options, including natural gas and renewable sources, in future NEPA documents for leasing and for site specific development.

**Response:** It would not be appropriate for the BLM, at this time, to commit to requiring elements of future NEPA documents without a proposed action. The scope of the analysis in subsequent NEPA documents would depend upon the number of applications received and the type, size, and location of operations proposed by the applicant, including the type of power generation proposed, as well as what appears reasonable in terms of alternatives for that power generation, at the time such application is processed. The Department could decide, as a matter of policy, that all future analyses NEPA would include such an analysis, even where not necessarily reasonable or proposed, however, a commitment to such policy would not be part of a targeted land use allocation plan amendment such as this. That said and in response to your suggestion, additional discussion at a programmatic level, related to natural gas plants as an alternative power source, has been added to the document to provide some perspective on the issue to the public, and decision makers.

Sincerely,



for Michael D. Nedd,  
Assistant Director, Minerals and Realty Management

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